# AN Exposition of the KINGES Prærogatiue collected out of the great Abridgement of Iustice FITZHERBERT, and other old Writers of the Lawes of ENGLAND, by the Right worshipfull Sir William Staunford Knight, lately one of the Iustices of the Queenes Maiesties Court of Common Pleas.

Whereunto is annexed the Proces to the same Prærogatiue appertayning.

*Cum Priuilegio.*

*Imprinted at London in Fleet-*
streat within Temple Barre at the Signe of the hand & Starre by Richard Totthil.
1590.

Stanford, Dr. William

# ¶ Les ſummaries de les chapters de ceſt lieur.

# Prærogatiua regis ædita anno decimoseptimo Edwardi secundi.



## Chapter 1.

### Le Roy auera le gard de touts lour terres que tient de luy en chief.

DOminus Rex habebit custodiã omniũ terrarũ eorum qui de ipso tenẽt in capite, p seruitium militare, de quibus ipsi tenẽtes fuerunt seisiti in dominico suo vt de feodo die quo obierũt, de quocũque tenuerint p huiusmodi seruitium, dum tamen ipsi tenuerunt de rege aliquod tenementũ ab antiquo de corona vsque ad legitimã ætatem heredis: Exceptis feodis Archiepiscopi Cantuariẽsis, Episcopi dunolm̃ inter Tyne & Tese: feodis Com̃ & Baroñ de marchijs de terris in marchia vbi bña dñi Reg. non currunt, Et vnde predictus Archiepiscopus, Episcopus, Comites & Barones habeant huiusmodi custodiam, licet alibi tenuerunt de Rege.

Prerogatiua, is as much to say, as a priuiledge or preheminence that any person hath before an other, which as it is tollerable in some, so is it most to be permitted & alloweb in a prince or soueraigne gouernor of a realme. For besides that, that he is the most excellent & worthiest part or member of the body of the commũ wealth, so is he also (through his good gouernance) the preseruer, nourisher, and defender of al the people being the rest of the same body. And by his great trauels, study and labors, they inioy not only their liues, lands & goodes but al that euer they haue besides, in rest, peace, and quietnes, as Seneca de consolatiõ ad Polibiũ saith: Omniũ domos illius vigilia defẽdit, omniũ otiũ illius labor, omniũ delitias illius industria, ónniũ vacationẽ illius ocupatio. For which cause the lawes do attribut vnto him al honor, dignity, prerogatiue & prehẽminẽs

which prerogatiue doth not only extend to his owen person but also to all other his possessions, goodes, and cattels. As that his person shal be subiect to no mans suit, his possessions can not be taken from him by any violence or wrongfull dissesin, his goods and cattels are vnder no tribute, tolle or custome, nor otherwise distrainable: with an infinite number of prerogatiues more, which were to tedious here to recite. Howbeit, forsomuch as in euery realm the kings Prerogatiues are no small part and portion of the profits and commodities of the Crown of the same, and namely within this realme of England, it hath bene thought good heretofore to declare and set forth in writing certain of the most highest and waightiest matters and articles touching the said prerogatiues. And hereupon was there a declaration made in writing by auchoritye of parliament holden in the 17. yeare of the raigne of king Ed. the 2. the beginninge whereof is in manner and forme as is aboue written: Howbeit, this Parliament maketh no parte of the kings prerogatiue, but long time before it had his being by thorder of the common law, as may plainlye appeare by them that haue written before the makinge of the saide statut of prerogatiue. For Glanuill that was chief Iustice in K. Henry the 2. dates writing of this matter, saith in this wise li. 7. cap. 16. Notandum qđ si quis in capite de dño rege tenere debet, tunc eius custodia ad dñm regẽ plenè pertinet, siue alios dños habere debeat ipse hæres, siue nõ, quia dñs Rex nullũ hñe potest parẽ, multo minus superiorẽ. Also Bracton which wrot in the latter time of king H. 3. saith *Lib. primꝰ de custod' & matrit dominorũ.* Si aliquis hæres terrã aliquã tenuerit de dño rege in capite, siue alios dños habuerit siue nõ, dñs rex alijs prefertur in custodia hæredis, siue ipse ab alijs prius feoffatus fuerit, vel posterius, cũ Rex parẽ non habet in regno suo. Both these writers doe not only agree in euery poynt, but also geue a realõ why the king should haue the prerogatiue con-

contened in this first chapter. Also Brit. an other old writer which wrot his booke in king E. 1. name, saith: Lib. 3. cap. 2. Des heirs nequedent si ils y eint ascūs qui aūcester morust seisie de ascū terre tenu de nous en chief, des aunciēts demeanes de nre coron, volons auer les gardes de touts les tres dont gard appēt q̄ deuiēt descēd a ceux heires cōe lour heritage ouesque touts les blees en tyels terres troues maint foits de qui fees q̄ les terres sont.

Brit. here not only agreeth with ỳ other, but also giueth ỳ R. ỳ Corne growing vpon the grounds which the kings tenāts hold at the time of his death. Also in the great Abridgement of F. prero. 26. you shal find in A. 21. H. 3. written in this maner. Nota qd̄ lex Angliæ & cōsuetudo eiusdē est, quod à quibuscúque aliquis feoffatus fuerit dum tamen a dño Rege aliquo tempore feoffatus fuerit p tenemētū qd̄ tenetur p seruiciū militare, qd̄ dns rex habeat custodiam omniū terrarū & tenementorū tam de feoffaméto aliorum quàm de feoffaméto ꝓprio. Which text if a man will any thing wrest, he may make the kings Prerogatiue more liberall then is made or declared by this Statute or any other the writers before remembred, for it extends to any lands holden of the king by knightes seruice, whether they be holden of ỳ king in Capite or not: but in asmuch as the said other writers haue written so plainly in this matter, we will stand to them, & extend the Prerogatiue no further: howbeit (as I sayd) all those writers beinge so long before the making of this Statut, do plainly argue & proue, that this Statut doth but confirme & declare that that was the cōmon law before, vnlesse we would doubt of the tyme of the making therof, as Littlet. doth in H. 15. E. 4. fo. 12. & 13. but without doubt it was made in king Edward the seconds time, and that plainly appeareth by the words cōtained in the 4. Chapter of this Prerogatiue, which be these Et illa voluntas tempore Regis H. patris Regis E. æstimari cōsuevit &c. Which words were not writtē in king

Edward the 1. dales, for then the wordes had bene Patris nostri, so that (as I thinke) it is not to be doubted, but that it was written in the time above limitted and expressed. Then goe we to the exposition of this first chapter of prerogative. The wordes be: Dominus Rex habebit custodiã omniũ terrarũ eorũ qui de ipso tenent in capite p seruitium militare. These wordes goe generally to all the kings tenants, that is to say, as well to his tenants for terme of life, as to his tenants of estate of inheritance, if it so be that he that is in the reuersion haue the said reuersion by discent, and be heyre vnto the said tenant for terme of lyfe, not forcing whether he haue the reuersion by discent from the sayd tenant for terme of life or els from any other auncestor: as take the case to be this, a man holdeth no lands of the king, but only as tenant by the curtesie, and those landes are holden in chiefe by knightes seruice, and the sayd tenant by the curtesye is seised in hys demesne as of fée, of landes holden of other lordes and dyeth, the landes holden of other discende vnto hym in the reuersion, which is indéede next heyre vnto the sayde tenant by the curtesie, in this case the kinge shall not onely haue the wardshippe of the landes that were holden by the curtesie, if the sayde heyre be within age, but also the lands holden of other by vertue of this prerogatiue. And if the sayde heyre were of full age at the time of the death of the sayde tenant by the curtesie, the Kinge shall haue primer seysyn both of the one land & of the other, as it appeareth in the newe Natura breuiũ fol. 258. Like law is it if a woman be endowed of lands holden in capite, & is seised of fée simple of landes holden of other & dyeth seised, & they discend vnto the heyre which is in the reuersion: in this case the kinge shall haue both these lands by vertu of this prerogatiue, like as he shal haue in the other case before, & that may you sée in 26. lib. Ass. P. 57. for in both these cases they be the kinges tenants, and hold of hym by knights seruice in capite, for tenant in dower,

dower in the kings case holdeth not of the heyre, but onely of the kinge, as it shall appeare more fully hereafter folio decimo.

But if he in the reuersion be not heyre of ỹ lands holden of other in the cases aboue remembred, otherwise it is. But what if he in the reuersion haue the same reuersion by purchase, and not by dyscent, whether shall the kinge then haue his prerogatiue or not? And as to that it should seme by the newe Natura breuiũ fol. 259. that the king shal haue hys prerogatiue in that case also, for there his remainder was to the heyre and to his wife, and to the heyres of their two bodyes lawfully begotten, and the husband in the remainder did sue liuery: howbeit against the lawe as me seemeth, Ideo quere. But if the case in the said newe Natura breuium had bene, that lands holden by knightes seruice in capite, had ben geuen to one for terme of his life, the remainder ouer in fee, which person in the remainder hath issue and dyeth, and the tenant for terme of life holdeth lands of other Lordes and dieth, which discend to the issue that is in the remainder, here it might be sayd, that the kinge should haue prerogatiue in ỹ whole, like as he had in ỹ cases before remembred of tenant by ỹ curtesie, & tenant in dower, for the like reason will serue in the one case, that serueth in the other. The wordes of the statut be further: De quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo, die quo obierunt de quocunque tenuerint. These wordes rather appertaine vnto the lands holden of other, then to the lands holden of the king in Capite, as it should appeare by the cases before remembred, and then by these wordes the kynges tenantes in his life time must hym selfe be seysed eyther in possession or in reuersion of those landes that be holden of a common person that shall discende vnto hys heyre. For if he were not seysed thereof but they discend vnto his heyre from some other auncestor, the king shall not haue his prerogatiue in them, as appeareth

reth in P. 5. Ed. 4. fo. 10. but whether the kinges tenant were seised of them in his own right, or in an others right, it maketh no difference. As take the case, he were seised of them but in right of his wife, and hath issue and dyeth, his issue is in the kings ward for the landes that his father held in Capite, & after ward the wife dieth, the issue being still in ward the king shal haue his Prerogatiue in these lands of the wife also, because the husband was seised of them as of his demean as of fee, the day of his death, and so within the compasse of this Statute. And this case may you see in P. 13. H. 4. f. 6. And note that not withstãding this statut speaketh but of land, yet seruices are to be taken by the equity of the same, as it is plainly proued by the words of Dié clausit extremũ, which saith Quãtum terre tenet de nobis, aut de alijs, tã in dñico, quàm in seruicio. So that if one hold of the kings tenant by certain seruices, the king shal haue the seruices in ward, for they be in nature and place of the land that is holden, and so shal it be supposed. And therfore when the king hath those seruices in ward, and the tenant that holdeth by those seruices dyeth his heyre within age, if the said seruices were knights seruice, the king shall haue ward by reason of wardship: but yet by that no prerogatiue in the other landes of the second ward which are holden of the other Lordes, as it may appeare in Gard. 105. A, 6. K the 2.

For the kings tenant was neuer seised of those other lands, ne yet of the seruices that they were holden by, and so without the compasse of this Prerogatiue. Like la we it is, where the king hath the temporalties of a Bishop in his custodie during the tyme the See is vacant, and one that holdeth of those temporalties by knights seruice dieth, hys heire within age, the king shal haue the wardship of hym, and the reason of it is, because the king hath the wardships of the temporalties, by reason whereof hys wardshyppe commeth, which temporalties the king hath in warde by

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the order of the common Law in iure Coronæ: For they be Barronies, which can bee holden of none other then of the king in Capite, and then by the common law, (take it he were no better then a common person) yet his highnes must haue the wardship of them that hold of those temporalties by knightes seruyce, if they fall during the tyme the said temporalties bee in his handes, with such landes as they hold of those temporalties, but not with such landes as they hold of other, and then must the heire thereof when hee commeth to his full age sue a Liuerie, as shall more plainly appeare when wee come to the third Chapiter of this Prerogatiue. The wordes of the Statute before recited are in dominico suo: this word demeine is not here taken to bee the verie possession, or taking of the profites, for if the Kinges tenant dye seised but of a reuersion, or of a remainder, in landes holden of a common person, and during the minoritie of his sonne the particuler tenant dyeth, the King (this notwithstanding) shall haue this land in ward as he hath the rest, as it may appeare M. 22. H. 6. fol. 18. and M. 15. Ed. 4. fol. 12. So it is if the Kinges tenant die seised of an aduowson appendant to landes holden of a common person. P. 46. E. 3. fol. 11.

The wordes be further, die quo obierunt, and therefore if the kinges tenaunt dye seised of landes holden of a common person, and a straunger abateth, yet the heire shalbe in warde, and the King may enter, and so is it if the heire recouer by Assise of Mortdaunceſter, as it appeareth in the New Natura breuium folio 257. and Liuerie 28. T. 12. K. 2. But take the case to bee, that the kinges tenant die not seised but is disseised and dyeth, whether in this case the king may haue prerogatiue or not, and it seemeth that hee may, for in all such cases where the heyre hath a right of entre, the kinge may enter in name of the heire, and holde it afterwarde in Warde: But if the heire haue but a title of entrie, or ryght of action, it

seemeth to bee otherwise. Howbeit looke for those matters in the sayd booke of M. 15. E. 4. fol. 13. and T. 12. H. 7. fol. 20. and 18. Lib. Ass. 18. where it is adiudged, that of landes holden of the king in chiefe, the king as in right of his ward might seise by a Scire facias vpon a title of entre. And note also, that there is somewhat more to bee vnderstanded here, then is written or expressed, that is to say, that the sayd landes must discende to the Kinges warde, for notwithstanding the kinges tenant were seised in his demesne as of fée, day of hys death, in landes holden of a common person, yet if the same after hys death doe not discend to the Kinges Warde, but to an other heire, the kinge shall not haue prerogatiue in them, as it appeareth in M. 12. Ed. 4. fol. 18.

The wordes of the Statute bée also, de quocunque tenuerunt. Put case the Kinges tenant is seised of certaine thynges which neither are holden of the kinge, nor yet of any other, whether shall the Kinge haue them in warde or not, as Parket, Warren, rent seeke, or aduowson in grosse. And as it should appeare in H. 3. Henrici 7. fol. 4. M. 46. Ed. 3. fol. 12. and M. 21. H. 6. fol. 11. the king cannot haue them in ward: And yet in M. 15. Ed. 4. fol. 14. some hold opinion to the contrarie: therefore inquire and learne what the law will in these cases.

The wordes of the Statute bée per huiusmodi seruicium, that is to say, by lyke seruice. By these wordes the landes that are holden of other must bée holden also by knightes seruice, or els the Statute extendes not to them, and yet the law is taken to the contrarie, for if the landes holden of other bée holden but in Socage or frée burgage, the king shall haue prerogatiue in them, as it appeareth in M. 24. E. 3. fol. 47. for this statute is but a confirmation of the common law, and therefore shall bée taken by equities, and namely when the law was so taken in Prerogatiue. 25. T. 9. H. 3. which was long tyme before the making of thys Statute. Howbeit Bracton Lib. 1. de

Custod

Custod & de Releuijs, and Britton Lib. 3. cap. 2. doth extend this prerogatiue no further then to landes holden of other by knightes seruice: therefore inquire for the cause and reason thereof. The wordes be further, Exceptis feodis Archiepiſ. Cantuar &c. This exception extendes not to the bodie, wherefore the king shall holde that in ward against all men, but it extendes to such lands as are holden of these persons exempted by thys statute. Put case then that any of these persons purchase a seignorie since the time of the making of this Statute, shall the king haue hys prerogatiue in the landes holden of that seignorie or not? And it is cleere hee shall, notwythstanding the aforesayd wordes of exception: for they do not extende but to such fees as were theires at the time of the making of this statute. Then further, forasmuch as there bee diuers Statutes concerning Wardship, made aswell before as since the tyme of King Edward the second, let vs see whether this Prerogatiue will extend to these statutes or not: and it seemeth it doth, for asmuch as this prerogatiue hath bine euer from the beginning as I haue said before. And therefore if the Kinges tenant beeing seised of landes holden of a common person, maketh a feoffement thereof by collusion, contrarie to the Statute of Marlebridge cap. 6. to defraud the Lord of the wardship, and dyeth, the Kinge hauing his heire in warde, and this matter found by office, shall seise vpon a Scire facias if the collusion bee auerrable, or wythout a Scire facias, if the collusion bee apparant And holde the same in ward by force of this prerogatiue, and that appeareth in M. 9. H. 4. fol. 6. So lykewyse, where the Statute made in 4. H. 7. cap. 17. prouideth that the heire Cesty que vse shalbe in warde. Put case that the Kinges tenant in capite before the Statute in Anno 27. Henrici 8. had made a feoffement of landes which hee holdeth of a common person to the vse of himselfe and hys heires, and dyed before that Statute, In thys case the Kinge should haue had hys Prerogatiue in the

landes so beeing put in feoffement to an vse euen as if hys tenant had died seised thereof, as it appeareth T. 12. H. 7. fol. 19. Then last of all let vs learne how the Lordes whose fées the king hath in ward by his Prerogatiue shall be demeaned and ordered for the rents to be due for their seignories during the wardship, whether they shall leese them as they do the landes. And it appeareth 29. Li. Ass. P. 5. that they had them by petition at the kinges handes, And therewyth agréeth the opinion of Hill, in P. 24. E. 3. fol. 24. and the New Natura breuium fol. 158. Learne the reason of these bookes, for it should séeme to mée the law to bée otherwyse, because that all meine seignories are suspended during the tyme the king hath the tenancy in warde, if it bée not percase for the surplusage of a rent seruyce which the meine may sue for to the kinge by way of petition. And to say as P. 26. Henrici 8. fol. 10. that the heire shall bee charged at hys full age wyth the sayd rentes, it were not reason, for then both his land should bée in warde, and yet hée charged to pay rent for the same: wherefore it séemeth that these bookes are agaynst the law. And with mée agréeth Bracton in hys first Booke in the chapiter de Custodia: where hée sayth. Et cúm tali ratione sint aliorum feoda in manu domini Regis, prædict ratione alij capitales domini feod' illorum nihil poterint exigere de terris & tenementis illis, nec in seruitijs nominatur, nec in auxilijs ad filiam maritandum, vel filium primogenit militem faciendum vel in factis quamdiu terræ fuerint in manu domini Regis, sed prcipietur Vicecom, quod huiusmodi distringere non permittat. Howbeit Bracton in his said booke in the chapiter de Releuijs saith, that the heire at his full age shal pay his relefe to euery of his Lordes, notwithstanding he hath bine in ward, quod nota: for in all other cases he neuer payeth relefe, that is to say, where he hath bin in ward, and he maketh no other reason for it but this, s. Quod hoc

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eſt ſpeciale in Rege propter ſuum priuilegium. And ſo is the booke in the 24. yere of king Edward the third fol. 14. and the 39. yere of the ſame king, Reliefe 7. Howbeit Brittons opinion Lib. 3. cap. 2. is, that the heire ſhal pay no Reliefe to the other Lordes after hee hath bine in the kinges warde, and commeth to his full age, and cannot find that the heire in any ſuch caſe ſhould or doth pay any reliefe to the king, that is to ſay, where hee hath bine in warde: Therefore learne what experience teacheth vs in theſe caſes. Veies leſtatute fait Anno 2. Ed. 6. cap. 8. en Raſtals collection, Eſcheators 15.

¶ Le Roy auera le Maryage de cheſcun, queux terres il auoit en garde. Cap. ij.

ITem Rex habebit maritagium hæred' infra ętatem, & in cuſtodia ſua exiſten, ſiue terrę hæred' eorundem ſint ab ãtiquo de Corona, ſiue de eſchaetis, que ſunt in manu domini Regis, ſiue habuerit maritagium ratione cuſtod' terrarum dominorum eorundem hæred nullo habito reſpectu ad prioritatẽ feoffamenti licet de alijs tenuerint.

All that is contayned in this Chapter was the Kinges Prerogatiue by the order of the common Law, as it may appear in the bookes of Bracton Lib. 1. Tit De hęrede Sockman in cuius cuſtodia eſſe debeat. And Britton Lib. 3. cap. 2. And in a booke M. 24 E. 3. fol. 31. ℔ 65. where it is ſaid, that no Lord can be more auncienter then the King, for all was in him and came from him at the beginning. And therefore his highneſſe muſt haue Prerogatiue in the bodie of whoſoeuer the infant holdeth beſides, bee it that the landes are holden of the kinges highnes as of the auncientnes of the Crone, or of his new Eſchetes, or come vnto him as ward by reaſon of wardſhip. T. 12, H. 4. fol. 18. or that his highnes do purchaſe the ſeignorie

of him that is Lord by posteriorittie, or purchaseth a mannor holden of one of his honors, which are of his new Escheates, of which mannor thaunceſter of the infant held by posteriorittie: In all theſe caſes the king ſhalbe preferred to the wardſhip of the bodie and maryage, before any other Lord of whom the aunceſter alſo held the day of his death by priorittie of feoffement, that is to ſay, more auncient feoffement. Howbeit in theſe caſes his highneſſe ſhall not haue wardſhip in the landes holden of thother Lordes, becauſe his tenant held not of hym in chiefe, but only ſhall haue preferrement in the body and the mariage before all other.

Then ſince the common law & ſtatut doth giue the king this prerogative, let vs ſée whether his highneſſe may by grauntinge away hys ſeignory to an other, graunt alſo with the ſame his prerogatiue to the grauntée, that is to ſay, whether his grauntee ſhall haue the ſame prerogatiue in the body of the childe as his highneſſe might haue had, in caſe the ſeignorie had ſtill continued in hym. And it appearcth in prerogatiue 23. M. 12. E. 3. and M. 14. H. 4. folio 9. that if the king graunt the ſeignory to an other in fée ſimple, that the grauntee ſhall haue no prerogatiue, becauſe there remaineth nothing in the kinge of that ſeignory vngraunted: But if the grant were made to a cõmon pſon for no longer time then during hys life, and the reuerſion faued to the kinge, then learne what the lawe will in that caſe: for we haue in H. 5. E. 3. fol. 4. that where the grant was made to the Quéene for terme of her life, the reuerſion in the king, that her grace had prerogatiue euen as the king himſelfe ſhould haue had, and for none other reaſon there made but only becauſe ſhée held in right of the king. But a man may add further to that reaſon, and ſay, that her grace and a common perſonne be not lyke, for though ſhée be a perſonne exempt from the king and may ſue and be ſued in her owne name, yet that ẏ ſhée hath is the kings, and loke what ſhee loſeth, ſo much departeth from the king: and

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therefore all her tenauntes of parcell of her eſtate may haue aide immedyately of the kinge wythout makinge her partie or priuie thereunto, and ſo ſhée holdeth méerelie in the kinges ryght: but a common perſonne doth not ſo: For the kinge hath nothinge to doe with the thinge that he holdeth duringe the life of the leſſée, howbeit if the grant be made to the Quéene for terme of her life, the remainder ouer in fée, it ſéemeth that her grace getteth no prerogatiue, And ſo it is ſayd in H.24.Edwardi tertij.fol. 65. Like law is it if the Kinge graunt an Honour to the Lord Prince and his heires Kings of England, It ſéemeth by the better opinion in H.21.Ed.3.fo.41. that the Lord Prince ſhall haue therewith the Kinges Prerogatiue, becauſe it is not ſeuered from the Crowne after the fourme as it is giuen, for none ſhalbe inheritor thereof but Kinges of this Realme.

And note well, that notwithſtanding the law were ſo, that none in this caſe but the Quéene or Prince myght haue the kinges Prerogatiue, yet if the Kynge hauinge the ſeigniorie in his handes after that the warde doth fall, graunt the ſame warde ouer, the grauntée ſhall haue and enioye the preferremente of the mariage agaynſte the other Lordes euen as the kinge ſhould hymſelfe, becauſe that notwithſtanding any ſuch graunt, yet the Kynge is ſayde ſtill gardeyne, and the infant driuen to ſue for his liuerye at the kinges handes when he commeth to his full age, and not at the handes of the grauntée, whych in this caſe is but only as a commyttée. And ſo is the booke in T.12.H.4.25.

Like law it is in the Caſe aboue remembred, where the Quéene hath Prerogatiue, and the Ward falleth, and ſhée grannteth her wardſhippe ouer, her Grauntee ſhall haue preferrement in the marrpage béefore all other Lords. And that alſo appeareth in Hillarie 6.Edward the third folio quarto. Howbeit that caſe was inforced

by that that the king confirmed the state of the graunte. Like law is it if the king haue a ward in right of his Crone, and graunteth it ouer with speciall wordes, that is to say, that the said graunte shall also haue warde by reason of wardship, if it fall during the minoritie of the first ward, In this case if there fall a warde which holdeth by posteriozitie of the heire that is in ward, yet that notwithstanding the said graunte shall haue the preferment in the ward of the bodie and mariage, euen as the king him selfe should haue had if he had made no such graunt, because it is merely in the kinges right which remayneth still Lord, and the grantee none other but as it were his Committee. And thys appeareth also in the 12. yeare of king H. the 4. fol. 25.

¶ Le Roy auera primer seisin de touts les terres, dont son tenant en chiefe fuit seisie in fee. Cap. iij.

ITem Rex habebit primam seisinam post mortem eorum qui de eo tenent in capite, de omnibus terris & tenementis, de quibus ipsi fuerunt seisiti in dominico suo vt de feodo, cuiuscunq; etatis heredes eorum fuerint, capiend' exitus eorundem terrarum & tenementorum donec facta fuerit inquisitio, prout moris est, & ceperit homagium huiusmodi hæred'.

In the 52. yeare of king Henry the third, long tyme before the makinge hereof, was there an other Statute made at Marlebridge concerning thys matter, in the 16. chapiter whereof it is thus prouyded. De hæreditate autem quę de domiñ Rege tenetur in capite sic obseruandum est, vt dominus Rex primā habeat inde seisinam, sicut prius inde habere consueuit, nec hæres, nec alius, in hæreditatem illam se intrudat, priusquam illam de manibus domini Regis recipiet, prout hmodi hæreditas de manib' ipsius, & anteceſſorū suorum recipi consueuerit.

sueuerit, & hoc intelligatur de terris & feodis quæ ratione seruicij militaris, socagij, vel seriantiæ, seu iure patronatus, in manibus Domini Regis esse cõsueuerũt. Both these Statutes declare them seines to be of none other force then as a confirmation of that, that was the kings Prerogatiue by the order of the Common Law, as it may appeare by these words, prout moris est: sicut prius habere consueuit: recipi consueuerit: esse consueuerunt. And therewith agreeth also Britton folio 17. The words of the Statute bee, Rex habebit primam seisinam: what primam seisinam is, it is declared by the words that followe, scilicet, capiendo omnes exitus &c. by which wordes may appeare the king shall not onely seise, but also receiue the whole profites vntill Liuerie be sued, which sute most commonly hath beene, and is, within the yeare and day next after the death of his tenant, and therefore the king vseth to take no more then the first fruites, that is to say, one yeares profites, if there be not apparant default in the heire, that hee will not sue his Liuerie, In which case then the kings Highnesse shall be aunswered of all the profites taken vntill Liuerie be sued, or at the least tendred, and after pursued with effect, yea and if it bee a generall liuerie and not rightfully pursued according vnto the order of the Lawe, the king shall reseise and be answered of all the meane profites from tyme of suing of the said Liuerie: for when the Liuerie is misused, it is as it had beene neuer sued. Howbeit this reseisure shall not bee wythout a Scire facias, as I shall therefore speake more at large hereafter. But if the heire or hee that should sue Liuerie doe make a rightfull sute for the same, according vnto the order of the Lawe, and as much as in him lieth, to doe to haue Liuerie, howbeit the king will not, but will be aduised ere he make him Liuerie, and so protracte the time: In this case his highnesse of right may not haue the profites from the tyme the partie was thus delayed, but ought to restore them vnto the partie vppon his liuerie, as

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may appeare in H.1. Henrie the seuenth folio 28. And thereuppon it is to be noted, that there be two kinds of Liueries, the one generall, the other speciall. The generall is the Liuerie that this Statute speaketh of, the especiall may be more properly treated of, when wee come vnto the thirteenth Chapiter of this Prerogatiue. And this generall Liuerie is sometimes made cum exitibus, and sometimes sine exitibus, but for the most part sine exitibus: For where it is made cum exitibus, from the time of the seisure, there it is properly no Liuerie, for it doth appeare the king never-seised rightfully or by ante title. As for example, if the king wil seise the land that is founde in the office to be holden of the Archbishop of Canterburie, or Bishoppe of Durham, or any such persons as are exempted in the first Chapiter of this Prerogatiue, In this case they shall haue an Ouster le maine vna cum exitibus, as it appeareth in lib.16. Edward the third P.29. The same is it, if of Landes holden in Capite, there be a lease made for terme of life, the remainder ouer to a stranger, tenant for terme of life dieth, and this matter found by office: now if the king seise, he in the remainder shall haue an Ouster le maine vna cum exitibus, as it appeareth in H.14. Henrie the fourth folio 32. P.18. Edward the third fol.21. L. 24. Edward the third fol.29.

Like Lawe it is where two holde iointly of the King, and the one dyeth, and this matter found by office, and yet that notwithstanding the King seiseth, hee that survliues shall haue an Ouster le maine vna cum exitibus, as it appeareth 44. Assi. P.36. and in the newe Natura breuium folio 256. and 257. For in all these cases where the Ouster le maine is vna cum exitibus, the King ought not to haue seized, and so saieth Thorp L.45. Edward the third folio 18. The wordes of the Statute bee further, Post mortem eorum qui de eo tenent. Vpon this, it is to be seene at what time after the Kings tenants death, this Liuerie shall be sued, If the possession of the free hold

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immediatelie after the death of the kings tenant discends vnto his heire, it is to bée sued forthwith, and if but onelie a reuersion descend, then it is not to be sued vntill after the death of the particular tenant, as it may appeare Natura breuium folio 258. where the heire sued not Liuerie vntill after the death of the tenant by the courtesie, tenant in Dower, and tenant for tearme of life. But learne what the Lawe shoulde haue béene, if the kings tenant had dyed seized of a reuersion whereupon rent had béene reserued, his heire of full age, whether hée should haue then sued Liuerie forthwith, or else to haue tarried vntill the death of the particular tenant: for in 9. 7. Henrie the first folio 3. Iune thinketh hée should tarrie, or else it might followe the king shoulde haue double Liuerie, that is to say, one for the rent, an other for the land, but Paston is in the contrarie opinion, and doth resemble it to a reuersion depending vpon an estate taile with a rent reserued, howbeit at this day there is an election geuen vnto the heyre, that is to saie, either to sue his Liuerie immediatelie after the death of his auncestor in the life of these particular tenants, or else to tarrie vntill they die, and if he sue his Liuerie in their life, hée payeth for Primer seisin but the moitie of one yeares profites: and if after their death, then hée payeth the whole yeares profite, howbeit if there be a rent reserued, and he pursueth his Liuerie in the life of the particular tenant, it séemeth beside the halfe yeares profite of the valewe of the land, he shall also pay the whole yeres profite of ỹ rent reserued: therefore learne what common experience doth teach vs in that case. The words of the Statute bée Qui de eo tenent in capite. By these words he must holde of the king in chiefe, for if he holde not of him in chiefe, the king can haue no Primer seisin. And yet you shall sée in the newe Natura breuium folio 263. that of landes in the Cittie of London holden of the King in Burgage

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the king hath Primer seisin, and the heire thereof sued his Liuerie, but the President seemeth to be against the Lawe: for Markham saieth in H.7. Edward the fourth folio 17. that in Neuelles case it was founde, that ones father died seised of certaine land that hee helde of the king in Burgage, and thereupon the escheator did seise: which seisor by the aduise of all the Justices was discharged by a Supersedeas awarded to the escheator, for the wordes of both the aforesaid Statutes be verie plaine therein, that is to say, that he must holde of the king in Capite, but whether hee holde of the king by knights seruice, or by Socage in Capite, it maketh no matter, so that hee holde in Capite, for the king in both cases shall haue Primer seisin, although not with so large a prerogatiue in the one case as in the other. For in the first case, where the tenure is knights seruice in Capite, the king shall haue the same prerogatiue when the heire is of full age at the death of his auncester, as he should haue had if he had beene within age, that is to saie, Primer seisin as well in the landes holden of others, as of him selfe, be it that the landes holden of other be holden by knightes seruice or in Socage: But otherwise it is where the tenure is but a tenure in Socage in Capite, for there the king shall haue no Primer seisin in Landes holden of other, namely, if they bee holden of other by knightes seruice, as it appeareth plainely by the Statute of Magna Charta, the seuen and twentie Chapiter, and in the new Natura breuium folio 256. nor yet any Primer seisin of landes holden of him selfe in Socage in Capite: If the heire at the death of his auncester be not of the age of fourteene yeares, as doth appeare in H.35. Henrie the first fol. 52. E.45. Edward the third folio 19. And also in the Newe Natura breuium folio 356. and folio 259. But in euerie of these cases they to whom the body belongeth shall haue an Ouster le maine of the lands vna cum exitibus, that is to say, the Lordes of whom the lād is holden by knightes seruice in the one case,

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and the Prochien amy in the other caſe. But where the landes be holden of the King in Socage, in capite, and the heire of the age of fowerteene yeares at the death of his anceſter, there the king ſhall haue primer ſeiſin, and the heire driuen to ſue liuerie, for there is no perſon that can make any title to the heire or his landes, but onely the king, and therefore the king muſt haue his primer ſeiſine, and the heire driuen to ſue his liuerie by expreſſe wordes of the forſaid Statute of Marlebridge: and ſo it ſeemeth alſo in that caſe that his Highneſſe ſhall haue primer ſeiſine in landes holden of other, ſo they be holden but in Socage, for the reaſon aboue remembred, Tamen quære. The wordes of the Statute be further, De omnibus terris & tenementis de quibus ipſi ſeiſiti fuerunt in dominico ſuo vt de feodo. Theſe wordes may be conferred and coupled with the firſt Chapiter of this Statute of Prerogatiue, which hath the verie ſelfe ſame wordes. And therfore loke in what caſes noted vppon the firſt Chapiter the king hath his Prerogatiue by reaſon of wardeſhipp, in all the ſame caſes ſhall his Highneſſe haue Prerogatiue by reaſon of primer ſeiſine if the heire were of full age at the death of his auncеſter. Wherefore to rehearſe them here particularly it were but ſuperfluous, except it bee in the caſe onely of colluſion giuen by the Statute of Marlebridge the firſt Chapiter, where the heire is within age, becauſe it ſpeaketh nothing of the heire that is of full age. And therefore in that caſe it ſeemeth the king can not haue like benefite of primer ſeiſin as he hath of wardſhip, when ỹ heire is within age. Howbeit there is a Booke in that point left at large, which is M. 17. Edward the third fo. 63 M. 7. Edward the third, Reliefe 12. and Colluſion 29. M. 31. Edward the third, and there the caſe was: The tenant enfeoffed his ſonne and heire, and dieth before the feoffée gaue notice thereof vnto the Lorde, Ideo quere. The wordes of the Statute be further, Cuiuſcunque ætatis heredes ipſorum fuerint. To theſe words alſo ſhall

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the first Chapiter of this Estatute haue relation, for they plainelie declare, that if the heire were within age at the death of his auncester, the King shall haue Primer seisin, and the heire driuen to sue his liuerie, notwithstanding also the King hath had the Wardshippe of him. For the wordes bee generallie spoken, and may be extended as wel where hee was within age at the death of his auncester, as where he was of full age. And so hath it beene euer vsed, sauing that where he hath beene in warde, hee payeth but one halfe yeares profite for Primer seisin, and in the other case hee payeth the whole. The wordes of the Statute bee farther, capiendo omnes exitus eorundem terrarum & tenementorum, donec facta fuerit inquisitio, prout moris est, & ceperit homagium heredis. By these wordes it may appeare, that the king after the death of his tenant, and before any office found, might seise the landes, and take the profites, which thing surelie is true, as plainely is proued by the Writte of Diem clausit extremum, which hath these wordes, Cape in manum nostram omnes terras & tenementa &c. donec aliud inde preceperimus, & per sacramentum proborum hominum diligenter inquiras &c. So the seiser goeth before the inquisition, howbeit since the Statute made at Lincolne in the xxix. yeare of the raigne of king Edward the first called Statutum de escaetoribus, it is not vsed to seise vntill office bee founde, and then the King to bee answeared of all the profits since his tenants decease, which commeth all to one effect. And yet that Statute dooth not restraine the seiser, but that the escheator may seise at his day without office. By the aforesaide Statute of Marlebridge in the xirteenth Chapiter it is expounded and plainely set forth of what landes and fees the King shall haue Primer seisin, for these be the wordes, Et hoc intelligatur de terris & feodis quæ ratione seruitij militaris, socagij, vel seriancię siue iure patronatus

tus in manibus Domini Regis eſſe conſueuerunt. By theſe wordes it may appeare, that hée that is Ward becauſe of Wardeſhippe, ſhall not ſue Liuerie, or where one doth holde of the Kings Warde by knights ſeruice, or in Socage, and dieth, his heire of full age, the King ſhall haue Primer ſeiſin of the landes that are ſo holden of his Warde, and the ſaid ſecond heire diuen to doe his homage or fealtie, as the caſe ſhall require, to the King, and alſo to pay his relefe vnto him, and to ſue Liuerie of the ſaide landes, as it doth appeare hée did in the newe Natura breuium folio 61. and 62. For it is within the compaſſe of theſe wordes, Quæ ratione ſeruitij militaris. So is it if the King haue a Biſhoppes temporalties in his handes during the tyme that the Sea is vacant, and one that doth holde of that temporaltie by knightes ſeruice or in Socage dieth his heire within age, In this caſe, after that the King hath had the Wardeſhippe, the heire at his full age ſhall pay Primer ſeiſin, and ſue his Liuerie. And ſo ſhall hée doe if hée bée of full age at the time of the death of his anceſter, for the wordes of the Statute bée, De feodis quæ iure patronatus in manibus Domini Regis eſſe conſueuerunt, and therewith agréeth the newe Natura breuium folio 254. But learne if the Kings tenant in Chiefe die, his heire of full age, and one that doth hold of the heire before he hath ſued his Liuerie, dieth, his heire alſo being of full age, whether in this caſe the King ſhall haue Primer ſeiſin of the Landes of the ſecond heire or no, as hée ſhould haue had if the heire of his tenant had béene within age, and in the Kings Warde at the tyme when this ſecond heire did fall: And it doth ſéeme to me he ſhall for the reaſon made afore. Then laſt of all, whether this Prerogatiue extend to anie Statute made ſince the time of king Edward the ſecond, and it ſéemes it doth, and that for the reaſon noted in the firſt Chapiter folio 9. as the feoffées of Ceſtuy que vſe, before the Statute made in the ſeuen and twentith yeare of Henrie the eight vſed to

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sue an Ouster le maine sine exitibus, which was in nature of a liuerie for the heire of cestuy que vse which had béene in warde. Item forasmuch as there be exceptions in the first Chapiter, and none in this, whether they also bée comprised within this Chapiter or not: and me séemeth they bée, because these two Chapters must concurre together and agrée in euerie thing. And if the heire be within age at the death of his auncestor, the Archbishop of Canterburie shall haue an Ouster le maine vna cum exitibus, so that the heire shall not sue liuerie of that, and then by the same reason if hée bée of full age at time of the death of his auncestor: for the liuerie in the one case and the other is geuen by this Chapter as me séemeth, Tamen quere.

¶ Le Roy auera lendowment & mariage de ses veufs & femmes. Cap.iiij.

ITem assignabit viduis post mortem virorum suorum qui de eo tenuerint in capite, dotem suam quæ eas contingit &c. licet heredes fuerint plenæ ætatis si viduę voluerint, & viduæ illæ ante assignationem dotis suæ prædictæ, siue heredes plenæ ætatis fuerint, siue infra ætatem, iurabunt quod se non maritabunt sine licentia Regis. Et si se maritauerint sine licentia Regis, tunc rex capiet in manum suam nomine districtionis omnes terras & tenementa quæ de eo tenentur in dotem, donec satisfecerint ad voluntatem suam, ita quod ipsa mulier nihil capiet de exitibus &c. quia per huiusmodi districtiones huiusmodi mulieres, seu viri eorum finem faciant Regi ad voluntatem suam, & illa voluntas tempore Regis H. patris regis E. estimari consueuit ad valentiam prædictæ dotis per vnum annum ad plus, nisi vberiorem gratiam habuerint. Mulieres quæ de Rege tenent in capite aliquam hereditatem, iurabunt similiter, cuiuscunq; fuerint ætatis, quod se non maritabunt sine licentia

ſine licentia Regis, & ſi fecerint, terræ & tenementa ipſarum eodem modo capiantur in manum domini Regis quouſque ſatisfecerint ad voluntatem Regis.

This ſtatute like wiſe doth but confirme the common law before, as it appeareth by the ſtatute of Magna char. ca. 7. which was firſt made in the time of king H. the 3. which is, Quod nulla vidua diſtringatur ad ſe maritandũ, ita tamen qd' ſecuritatẽ faciet, qd' ſe non maritabit ſine aſſenſu noſtro, ſi de nobis tenuerit. And alſo in 24. H. 3. Prerogatiue 27. it is ſaid, that when the kings tenant dyeth, & his wife endowed, ſhe cannot marrie without the kings licence, and if ſhe do, ſhee and her huſband ſhall make fine. *The expoſition.* It ſhould appeare by the words that the wyues of all them that hold in Capite, cannot haue dower at any mans hands but onlie the kings, if his grace wil, for in that his grace hath a prerogatiue aboue all common perſons, as well for that ſhe ſhall therby hold of his highnes in chiefe, as for that ſhe ſhal not marrie without licence, for ſo ſhe might be maried vnto the kinges enemie, & therebp the ſtrength of the Crowne infeebled. Therefore it is prouided that his highnes may aſſigne the dower, whether the heire be of full age or within age, to the intent, that ſhe before the receiuing therof ſhal take a corporal othe not to marry without the kings licence. The maner of the aſſignement whether the heire be of full age or within age, is very well ſet forth in the New Natura bre. fo. 263. in the writ De dote aſsignanda. Howbeit for that ſome things are there noted which ſeeme to repugne with our booke caſes, I purpoſe to conferre the one with the other, & ſee how they can agree. In the ſaid Natura bre. it appeareth, that notwithſtãding the king had cõmitted the land ouer to an other, yet the woman ſued in the Chancerie to the king for her dower, & not to the Committee, & in our bookes you ſhal ſee many writs brought againſt the Committee, yea & in ſome of them that ſhe recouered her dower, & the king not made party to the ſame, as the book is in H. 4. H. 7. f. 1. which is more at large.

Aide de Roy 33. where the writ of Dower was brought against the kings Committée, who pleaded in barre wout praying in aide of the king, & the barre was found against him, & notwithstãding that it did appeare vnto the Iustices that the king might be touched therby, yet would they not surcesse, but awarded that the demãdant should recouer, & take for their cause the statute of Bigamis Añ 4. E. 1. ca. 3. which saith in this maner. De dotibus mulierũ vbi aliqui custodes hereditatis maritorũ suorũ custodias habẽt ex dono vel concessione Regis: Siue custodes rem petitam teneãt, siue heredes dictorũ teñtorum vocentur ad warrantũ si excipiant qd sine Rege respondere non possunt, non ideo supsedeatur, quin in loquela ꝑdicta, put iustũ fuerit procedatur. This Natura breuium, and this booke of 4. H. 7. seeme not to agree. For where takes she any oth, where she recouers by a writ of Dower in the common place? which oth she must needes haue taken if she had sued in the Chancery, or how may the Committée indow her, when percase he wil indow her of more then she ought to haue, or endow her where she is not dowable by the law? whereunto one may aunswere in this wise, that his wrongfull endowmẽt shal not conclude the king, but that his grace may reforme the thing when he will, & since he hath committed all his interest ouer, durãte minore ętate, his grace may permit the endowment made by the Committée, if it be rightfully made to stand, & specially because of ꝑ statute of Bigamis, which allowes it so to be. And notwithstãding she take no othe, yet can she not marrie without the kinges lycence, for this endowmẽt by the Committée is the kings endowmẽt vpon ꝑ matter, for that, that he holdeth in right of the king which continues still gardein, notwithstanding any such commission or graunt of the wardship. Therefore it should seeme that after the ward committed ouer (as is aforesaid) it is at the election of the woman, whether she wil sue to the king in the Chãcery or at the cõmon law against the Committée. But if the king do but commit the ward

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ouer durante bene placito, otherwise it is: for there she must sue only to the king, as appeareth in Dower 169. 8. E 2. And note wel that this statute of Bigamis before recited will also, that if the heire of the husband be vouched to warranty being in the custody of those Cõmittees, ỳ the Justices shal not surcesse no more then when the writ of Dower is brought against the Cõmittee. Contrary to this branch of the said statute are there diuers bookes, as Ꝑ. 18. E. 3. f. 38. H. 8. E. 3. 15. & Aide de Roy 64. H. 18. E. 3. where the said Cõmittee came in, the heire being vouched in their ward, & shewed how they held of ỳ kings leale & praied in aid of the king & had it: whereat I do not a little marueil because of this statute of Bigamis, which was neuer spoken of, ne yet remẽbred in these bookes, their iudgments as it should seeme being directly against this statute. Howbeit the maner of the leale doth not ther certeinly appeare, that is to say, whether the wardship were granted durante bene placito, or durãte minore ætate, for that would make a difference, as I haue said before. Also the booke is Ꝑ. 39. E. 3. f. 8. wherin a writ of Dower brought against the Cõmittee of ỳ Committee, there was aide granted of the king, but that seemes to be out of the compasse of the statute of Bigamis, which speakes only of them ỳ haue it of the kings grant, & so hath not the second Cõmittee: Therfore learn what the law wil in these cases: but if ỳ wardship be cõmitted to the wife wout any exception or forprise of her dower, she by ỳ is cõcluded to claime any dower during ỳ said wardship, as it may appeare in Ꝑ. 2. H. 4. f. 7. in the said Nat. breuiũ f. 264. D. It is also said, that where liuerie is made to the heire before the womã sue for her dower in the Chãcery, & in the said liuery there is no sauing made for her dower, ỳ then she must pursue her writ of dower against her heir: & ỳ reason that is there made is, because the king hath made liuery generally wout any reseruation of dower to be assigned by his highnes: Wherunto I answere, that when liuerie is sued before assignment of dower, there is most cõmonly in the writs of

liuery a sauing made for her dower, if it so be that she were found the kings tenants wife in the office, and she being so found, if the heire sue a generall liuerie, leauing out these words, salua dote, or retenta dote &c. it is a good cause for the king to reherce the whole, for ỳ liuerie is mistned in that case, for that I learned of *Iustice Spilman*, which noted it so in 11. H. 8. but if she be not found wife in the office, the heire may sue his liuerie without any such sauing, to say, that the king by making such a liuerie should waiue the aduantage of his prerogatiue in the dower: that seemes not to be true, vnlesse the said waiuer were by expresse wordes: wherefore it seemes the heire in that case after liuerie is not bound to yeld vnto her dower, but her onlie remedie is to sue for the same to the king, & that must be first vpon an office (as I think) finding that she was his tenants wife, Ideo quere, & learne whether she may haue dower in any case, either in the Chancerie, or by writ of Dower at the common law against the Committée or the heir, vnlesse she be found wife first by office, as is aforesaid, except it be in cases where the king will refuse his prerogatiue. And note that like as the king hath a prerogatiue by this statute to yeld dower to the wife of his tenant, so hath his highnes a prerogatiue by the common law to withhold dower from the wife of his tenãt which no common person hath. As put case in a writ of Dower the heire be vouched in ỳ kings ward, & the tenant shewes for his line the feoffement with warranty of ỳ husband which is father to him ỳ is vouched, yet that not wtstãding she shal recouer her dower against the tenant, & not against the heire, because ỳ els the king should lose the wardship of the lãds, where ỳ womã may (wout her losse) as wel recouer her demãd against ỳ tenãt, as she should against the king, & yet if the king were a cõmon person in that case, he should lose ỳ wardship of so much as she demãdeth. And this book is 39. 26. E. 3. f. 58. wher it is said, that ỳ K. Committée of the wardship shal not haue the prerogatiue, & ther with agrees H. 8. E. 3. fo. 15. And note that like as the king hath

prero-

prerogatiue against the wife that bringeth the writ of Dower, so shall he haue prerogatiue against the tenant in the the said writ of Dower: for notwithstanding that the tenāt in the selfe same case haue iudgement to recouer ouer in value against the heire which is in the kings ward, yet he shal haue no execution of that recouerie till the land be sued out of the kings hands. Howbeit 9.27.E.3.f.87. is contrarie to the said booke of 26.E.3. ideo quære. And learne and enquire whether a womā beeing thus endowed at the hāds of the selfe of her husband of such lands as he died not seised of, and whereof the king at that time can haue no wardship, whether shee may marrie or not without the kynges lycence, and it seemes shee cannot for any wordes compriled within this statute. And it appeareth in 26.Lib.ass. p.57. that where a woman was endowed by gardeine in chiualrie, and afterwards the gardein committed Treason whereby the seignorie was forfait to the king, that after this forfaiture shee should hold of the king, not of the heire which was in the reuersion, in which case then shee cannot marrie without licence as mée thinketh. Then further it is to be seene to what landes the statute doth extend vnto, and to what not. It extendes to lands holden in Capite whereof any woman claymeth dower, as may appeare by the wordes of the same statute, and not to any other lands, for if the king haue in his custodie Bishops temporalties during the time the See is vacant, and one that holdeth of those temporalties by knights seruice dieth his heire being within age, whereby the king hath the wardship of hys heire and endoweth his wife, in this case shee shall make no oth but may marrie without lycence. Like law is it where shee is endowed of lands that are holden of hym that is the kinges highnesse ward by reason of a tenure in Capite, for in both these cases the land whereof dower is demanded are not holden of the king in chiefe, and thys doth appeare in the new Natura breuium fo.264.a. and yet in both those cases shee is endowed in the Chauncerie, but

what is that to the purpose? for so that the heire in those cases sue liuerie of those lands, & yet they be neuer the more for that holden in chief, but only vsed for a solemnity because they were in the kings hands once by office, which is matter of record. The wordes of the statute be further. Et si se maritauerint sine licētia Regis, tunc rex capiet in manū suā nomine districtionis oēs terras & tenta quę de eo tenent in dotem &c. These wordes be knit in a copulatiue to the former wordes contained within this chapter, that is to say, where she hath demanded dower, & is sworne not to marrie, but if shée will neuer demand dower of the landes holden in Capite, shée may marrie where shée will: for the wordes of the statute be, quod assignabit viduis dotem, si viduę illę voluerint, and so thinks Iustice Fitzherbert in his Natura breuium f. 175. Howbeit by the booke in 40. Lib. ass. 36. it appeareth ỳ the wife neuer demanded dower & yet had allowance of it, & did marry also without licence & yet paid no fine, & therefore the case was: The kings tenant in taile in chiefe made a feoffement by licence & tooke estate againe to him & to his wife & dyed, the wife takes an other husband & dyes, after whose death the auncient estate taile being found by office, the licence was holden void, because the king was disceiued therein, and the second baron driuen to answere for the meine profits of two partes of the land, but not for the third part, because shée was endowable, quod nota A woman tenant in dower of no mans assignment, And some there thought shée should forfait her dower because shée was partie to the disceit. Howbeit this case semeth not to be properly within the compas of this statute. Also Fitzherbert in the said Natura breuium fo. 174. thinketh, that where the king hath vsed to graunt to other the mariage of his widdowes that a composition with the grantée made for the same (whether it be made by the wife or the husband) is as good as if it were made with the king, yet cannot the grantée in such case compell her to marrie, for that should be contrarie to the

statute

statute of Magna carta c.7. which will that shée shal not be constrained to marrie by distresse, but if shée will shée may liue sole. Howbeit at this day by the statute of 32. H.8. ca. 46. the compositiõ is gẽuen to the Maister of the kynges Wardes & liueries with iij. of the counsell of the said court. And likewise authority is gẽuen to them where the kings widowes marrie themselues wõut licence to take a reasonable fine by their discretions, according to the statute of Prærog. reg. which statute plainly setteth forth what hath bin vsed to be done in such cases, ỹ is to say, the value of her dower by one yere: & therewith agrées the New Nat. bre. f. 174. And for that fine the king shall seyse all the lands and tenements so holden in dower, as it appeares by the letter of the statute. Howbeit the Register giueth that the kyng may seise alwel the land of the husbãd as of the wife, because the mariage is a wrong done to the king, but the statute is contrary to that, and therefore Fitzherbert in the said Natura breuium f. 174. thinkes it to be no law: For as well might the lands that the woman hath of her inheritance be then seised, wherefore no other land ought to be seised then that she holdeth in dower, as it appeares in the said Natura breuium f. 265. c. And learne whether the woman obtaining dower at the hands of the Cõmittée, or of the heire of lands holden in capite without making any othe may marrie or not without licence, & as mée seemeth shée cannot, for as soone as shée is indowed of those lands shée is the kinges tenant & not tenant to the heire which is in reuersion: for if a trespas be done vpon the land, shée shall haue a writ out of the Chancery that one such hath entred vpon the kings possession, & the auowrie to be made by the king resteth onely vpon her, & so is the opinion of Wood in P. 1. H. 7. f. 17. And yet ỹ reuersion is in the heire only, for if shée do wast, the heire shal punish her for it, & not the king. Then further let vs sée of what force this dower is when it is made in the Chancery, & how shée shalbe admeasured in the same if it be to great, for if it be to little there is no remedy for her

but to stand to her owne harmes if shé in the Chācery once did accept it, not knowing whether she were then within age or of full age, as it may appeare in M. 18. E. 3. f. 29. The dowment in the Chancery is of this force, that whether it be by right or by wrong it cannot be defeated by way of plea without a suit made in the Chācery for the defeating therof, as it appeareth in M. 17. E. 3. f. 71. & Dower 128. M. 31 E. 3. And therefore in a verie strong case one doth trauerse the office which is in the Chancery by reason the land is holden of him by knights seruice, & not of the king, & hath an Ouster le main vnā cū exitibus: yet if shé were endowed before in the Chancery vpon ỳ office, her dower remaineth undefeated notwithstāding this trauerse & Ouster le main vntill an other suit be made in the Chancery for the defeating of the same. Howbeit in this case if the dower be too much, the Lord that tendeth ỳ trauerse may haue a writ of Admeasurement at the common law, & so cause it to be admeasured wout suing to the king for the same. For it is no losse to his highnes though shé be admeasured, seeing ỳ land is not holden of him, as it appeareth Admeasurement 4. M. 7. R. 2. & there it is agréed that the heire shal haue a writ of Admeasurement of assignment of dower made by his ancestor, quere tamen. But the abator shall not haue a writ of Admeasuremēt nor gardian en fait of assignment made by gardian en droit, nor if the heire were of full age at the death of his ancestor & died his heire within age, the garden of his heire shall not haue a writ of Admeasurement. But take the case to be that a woman is endowed in the Chancerie, the rest of the land there remaining still in the kings hands, if it be surmised by ỳ heire or any other for the king that the land assigned to the wife is not extended to the very value, but that it is more in value then it is extēded for, now vpon this surmise there shalbe a new extent made, which béeing returned into the Chancerie a Scire facias shall be awarded against the woman, and if shé be warned & come not, or appeare and say nothing shé shalbe newly endowed,

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as it is said in Natura breuiū f.265.b. Then let vs see farther at what time the woman may aske her dower in the Chancery, & when she is indowed & loseth her dower vpon a recouery had against her by an eigne title how she shalbe recompenced. If the husband haue land in diuers counties whereby after his death there be awarded seuerall writs of Diem clausit extremū into euery of those counties she shal not be indowed vntill such time as all the said writs be returned againe into the Cauncery, as it may appeare in Liuery 29.H.16.E.3 And note that when she is indowed in the Chancery & afterwards loseth by a recouery vpon an eigne title, then shee hath none other remedy but to cause the record of the same recouery to be remoued into the chācery, and vpon the first record whereby it appeared she had dower and this other record of the recouery, she shall haue a Scire facias reciting both the records against the tenant of the ij. parts to release the said ij. parts into the kings hands & to be newly indowed of the same, but not to recouer any damages, notwithstanding damages were recouered against her: & this appeareth 43.li.ass.p.32. Now to the last branch of this statute, which is, that woemen that hold of the king in chiefe any inheritance of what age soeuer they be shal likewise swere not to marry &c. By the order of the common law before the making of this statute al woemen that were within age, and in ward should when they came of full age, be maried by their lords euery one of them with their portions, & if they were of full age at the death of their ancestors, yet should they neuertheless be in the Lordes keeping vntill they were maried by the aduise and disposition of their Lords. For as Glanuil in his 7. booke cap. 12. that he wrote in the time of king H.2. saith, Sine dñorum dispositione vel assensu nulla mulier heres terrę maritari potest de iure vel consuetudine regni, and therfore saith he, if a man haue issue one or moe daughters which be his heirs apparant & marieth any of thē without the assent of his Lord, that he thereby forfaits his inheritance by the law

law and custome of the realme, so that he shall neuer recouer it againe, but only through his Lords mercy, & that for this cause: For when the husband of such a woman shall do his homage for the tenements so holden by knights seruice it is requisite to haue the Lords will & assent lest he be compelled to receiue homage of his mortall enemy or some other vnable personage: nevertheless if the tenant sue to his Lord for licence to marry his daughter, the Lord is bound to consent, or els to shew cause why he should not, and if he will not, the woman may marry where she listes without his assent. And the said Glanuil further saith, that Tenant in dower cannot in like wise marry without the assent of him that is her warrant, that is to say the heire: And if she do she shall lose her dower, and yet there the husband shal do no homage, but what then he shall do fealtie, and for that cause also she shall haue licence. And further saith if she hold of diuerse Lords it is sufficient for her to haue the assent of the chiefe Lord. And he saith that woman being in ward Si de corporibus suis forisfecerint: which words as I vnderstand them be if they cõmit fornication and that be proued, then they that offend shalbe disherited, so that her portion then goes to the other sisters that haue not in the like offended: And if they al offend, then the Lord shal haue the inheritance by way of eschete. Howbeit saith he where they be once maryed by the Lords assent and after become widowes they shall be no more in ward, but yet if they marry againe they must haue his assent for the reason before made. But then after they haue been once maried, they shall not forfayt their inheritance for their incontinency, so that it appeares plainely here by Glanuill that this whole statute of Prærogatiue should be but a confirmation of the common law. And that the law was so as Glanuill tooke it, it may partly appeare by the said statute of Mag. charta ca. 7. For the words are not onely quod vidua securitatem faciet quod se non maritabit sine assensu nostro si de nobis tenuerit, but are also

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vel ſine aſſenſu domini ſui ſi de alio tenuerit. And Bracó li. 1. agrées alſo with Glanuil. Howbeit he ſaith where a woman in the life of her auncesters marryes without the aſſent of the Lord, or where the widow marries without the aſſent of her warrant, that the inheritance or the dower ſhall not now be forfaited, although in old time it was. And further ſaith, that the heire in ſocage being a woman ſhalbe maried by the Lord like as ſhe ſhould be if ſhe were heire of lands holden by knights ſeruice. And further ſaith that the heire male ſhalbe maryed by the Lord more then once, that is to ſay, as often as hee ſhall become vnmaried in the time that hee is vnder age of xxi. yeres. But now by the ſtatute of W. 1. ca. 22. the Lords are abridged of their power in theſe maryages of the heires females, for if they now be within the age of xiiij. yeres at the death of their auncestor, and the Lord doth not marry them before they come to xvi. yeres, then ſhall they recouer their heritage without any thing giuen eyther for the ward or for the mariage. And if they malicioufly or thorough euill counſel refuſe to marry where their Lords do appoint them without diſparagement, then ſhall their Lord hold their land vntill they come to the age of xxi. yeres and longer vntill they haue taken the value of the maryage. Out of this ſtatute (if it be well conſidered) a man may gather that the common law was no leſſe then is heere recited. And this ſtatute was made about the third yere of king E. the 1. a little before that Britton began to write his booke: for Britton fol. 169. ſayes that the marriages ſhould bee offered to the heires females before they accompliſh the age of xiiij. yeres, and if not, the Lord ſhall loſe his right in the ſaid marriages. I ſuppoſe that the Printer miſtooke the number of the yeres and ſhould haue printed fiftéene where it is but fourtéene, and therefore it is good to ſée other coppies for this matter. And Britton alſo ſayth that if he or ſhe haue béen once maryed by the Lord or in the life of their father or once agréed with their Lord for their mar-

mariage, they shall neuer againe bée maried by him, but may marry themselues where they list, so that they hold nothing of the King. And fol. 168. he sayth that the King shall haue the mariage of all the heires females where they hold of the King of what age soeuer they bée as often as they shalbe to marry, so that they cannot marry without the kings licence. Thus is the last clause of this Chapter expressely proued by Britton that the common law did still remaine as it was for the maryage of the heires females in the Kinges case and not altered or abridged by the said estatute of Westminster 1. and therefore was the statute in the 39. yeere of King Henrie the first, the last Chapter made in this wise. Item de aduisamento, assensu & authoritate prædict' ordinatum est & stabilitum quod mulieres existentes etatis 14. annorum tempore mortis anteceſſorum suorum absque quæstione seu difficultate habeant liberationem terrarum & tenementorum suorum sibi descensorum quia sic lex istius terræ vult quod tunc ipsi haberent. Howbeit this statute prouides not where they bée within the age of fourtéene yeres at the death of their ancestour, Ideo quære. For as our late bokes go since Brittons time the King hath lost his Prerogatiue, vpon what occasion I know not, but I would gladly learne. For Forteſcue sayes H. 35. H. 6. fo. 52. that when the heire female sues her liuery shée takes no othe that shée shall not marry as the Kings wydow doth, and therefore saith he it should séeme she should make no fine if she marry without licence. Howbeit Littleton sayes that if the heire female be of the age of xv. yeres at the death of her ancestour and marry her selfe without licence, that shee shal make a fine, for it amounteth to an alienation. For after issue had the husband is become the Kings tenant and he solely shall do homage in his owne name. And yet afterwardes H. 15. E. 4. fol. 13. the same Littleton sayes that the latter clause of the same statute is void, for the

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daughter which is in ward marrying her selfe to an other without licence shall not make fine to the king. Thus by the argument of the said booke of 35.H.6. it appeares that they take the king to be bound by the said statute of W. 1. and make him no better then a common person, whereat I haue no little marualle, since he is not named in the said statute. For in the said booke H.35.H.6.Gard.P.71. it is agréed by the Court, that if the king after the age of 14. yéeres and before 16. do marry the heire female, shée shall haue liberty forthwith vpon the marryage, although shée then be not of the age of sixteene yeres, because that shee was of full age before as it is there said, that is to say, as soone as she was 14. And the ij. yeres ouer is but onely geuen for the mariage, which when it is once had, and the 14 yeres past, the King or Lord léese their interest. And so it was granted, that if she were married before the age of 14. and after her husband dies before the said age, when she comes to the said age of 14. shée shall haue liuery. And there it was also said, that these two yeres were giuen to the Lord to tender her maryage in, for the tender before was void, because it was within the age of 14. yeres. But note that if ỳ heire female being vnder the age of 14. yeres falleth into the Kings hands as ward because of certaine lands that her father held of the king in chiefe, and by reason thereof the king hath also the lands in ward which are holden of other in focage, in this case when shee comes to the age of fourtéene yeres, and is vnmaried, she shall not haue liuery of these lands holden in focage, and yet by reason of them the King hath not the mariage of her. But what then? she cannot sue her liuery by parcels, and that is the cause that the whole land shall tarry in the Kinges hands, till a whole liuery may be sued of them all. And this appeares in the new Natura breuium fo. 256. And last of all note, that this latter clause extends not to weomen that clayme by purchase, but onely by discent. And therefore it appeares Liuery 31.H.15.E.3. that where it

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was found vpon the Diem clausit, that the wife was iointly infeoffed with her husband, she had an Ouster le maine without finding any suretie of her mariage. And note also, that by the common law if one will marry the kings niece, that is to say, his bond woman without licence, he shall pay a fine vnto the king, as appeares in 33. E. 3. Li. ass. Trauers 36.

LE Roy auera homage de chescun parcener, & sur partition chescun de eux auera part del terre tenus de Roy. Cap. 5.

ET si vna hæreditas quę de Rege tenetur in capite, descendat pluribus participibus, tunc omnes illi hæredes facient homagium Regi, & illa hæreditas quæ de Rege tenetur, participabitur inter hæredes illos, ita q̃ quilibet eorum extunc partem suam tenebit de Rege.

This statute is somewhat declared by a statute made long time before, that is to say, in the 14. yere of king Henry the third, called Statutum Hiberniæ de cohæredibus, which for the better declaration of this prerogatiue I haue also here noted.

Henricus Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitanię & Normañ, comes Andigauię, dilecto & fideli suo Gerardo filio Mauricij Iusticiario Hiberniæ salutem. Cum milites de partibus Hiberniæ nuper ad nos accedentes nobis ostenderunt, quòd cum hereditas deuoluta sit inter sorores in terra nostra Hiberniæ, Iusticiarij nostri in eisdem partibus itinerantes incerti sunt, vtrum postnatæ sorores tenere debeant de primogenita sorore, & ei facere homagiũ, an non. Et quia prædicti milites petierũt certiorari qualiter in regno nostro Angliæ in casu consimili hactenus vsitatum fuit, sic ad instantiam eorundem vobis significamus, quod in regno

nostro

noſtro Angliæ talis eſt lex & conſuetudo in hoc caſu, ꝙ ſi quis de nobis tenuerit in capite, & habuerit filias hæredes, ipſo patre defuncto, anteceſſores noſtri habuerũt, & nos ſemper habuimus, & cepimus homagium de omnibus hmdi filiabus, & ſingulę earũ tenuerũt de nobis in capite in hoc caſu. Et ſi infra ętatem fuerint, nos habebimus cuſtodiam earum, & maritagiũ ſingularum. Si autem de alio dño tenuerint, & ipſæ ſorores infra ætatẽ fuerint, earum dominus habeat cuſtodiã & maritagium ſingularũ, & primogenita tantũ faciet homagiũ dño pro ſe & omnibus ſororibus ſuis, & aliæ ſorores cũ ad ętatẽ peruenerint facient ſeruitia dñis feodi per manꝰ primogenitę. Nec poteſt primogenita ea ratione vel occaſione á poſtnatis ſororibus homagiũ vel cuſtodiam, vel aliquã aliam ſubiectioñ exigere vel habere. Quia cũ omnes ſorores ſint quaſi vnus hæres de vna hęreditate, ſi primogenita poſſet habere homagium aliarũ ſororũ vel cuſtodiam petere, tunc eſſet illa hęreditas diuiſa, ita ꝙ primogenita ſoror eſſet ſimul & ſemel de vna hæreditate dña & hęres. Hæres autem ſuę partis, & dña ſororũ ſuarum, ꝙ quidem in iſto caſu fieri non poſsit, cũ ipſa primogenia nihil poſſet petere plus quã aliæ ſorores, niſi capitale meſuagiũ ratione einecię. Pręterea ſi primogenita hmdi homagiũ á poſtnatis ſororibus ſuis acciperet, eſſet quaſi dña earũ, & habere poſsit cuſtodiam earum, & filiorum ſuorum, & hoc eſſet quaſi cõmittere agnum lupo ad deuorand'. Et ideò vobis mandamus, ꝙ præd' conſuetudines quas in regno nro Anglię habemus in hoc caſu, vt præd eſt, in terra nra Hibernię proclamari ac firmiter teneri faciatis & obſeruari. In cuius rei &c. Teſte me ipſo apud Weſt. nono die Feb. Anno regni noſtri 14.

Before the making of this ſtatute called Statut Hibernię it appeareth by Glanuil Li. 7. ca. 3. which wrote in ꝑ time of king Henry ꝑ ſecõd that the husband of the eldeſt daughter ſhould do homage vnto the Lord for the whole inheritance, and that the other daughters or their husbandes ſhould

ſhould do their ſeruice for their tenements vnto the chiefe Lord by the handes of her eldeſt ſiſter, or her huſband, and yet they for the ſame ſhould not be bound to do any homage or fealtie to the eldeſt ſiſter or her huſband during their liues, ne yet the heires that come of them in the firſt degree or ſecond degree. But the heires in the third degree by the law of the land were bound to do homage, and to pay reliefe for their tenements vnto the heire of the eldeſt daughter, quod nota. And the reaſon of it after the mind of Bracton Lib. 1. de hom̃ capiend', which agreeth with Glanuill is this, that when iſſue diſcendeth of them to the third or fourth degree, it is not like that iſſue ſhould faile of their bodies, and then may the heires of the eldeſt daughter take homage very well, for it is vnlikely that the eldeſt daughter or her heires ſhould then haue the ſame by diſcent, for theſe be his wordes: Quia cùm ſint hæredes tres de hærede in hæredem, extunc vix poterint deficere, & ideo tunc ſequitur homagium abſque damno & periculo donatoris. For if there were likelyhood of the diſcent, in this caſe the taking of homage ſhould be rather hurtfull then benefitial: For by the ancient lawes if one had infeoffed an other to hold of him, and had taken his homage, he could neuer be his heire afterwardes, but the next vnder the feoffor, and his heires of the kindred ſhould rather haue it. As put caſe before the ſtatute of Quia emptores, the eldeſt ſonne had infeoffed the middlemoſt to hold of him, and had taken his homage, the middlemoſt dieth without iſſue, the yongeſt ſhould haue had the land, and not the eldeſt, becauſe of the homage that he tooke: howbeit if there were no yonger ſonne or any other heire, then the feoffor might claime the land againe by Eſchete and not otherwiſe: for as long as there were any, the feoffor or his heirs of whom the lands were ſo holden might not haue it. And that Bracton ſheweth alſo in his firſt booke in ỹ title de maritagijs reuerſis ad donatorẽ ꝓ defectu hæredis, for he hath this text or ſaying there, ꝙ homagiũ expellit dominicũ, & retinebit

retinebit ſeruitium, & quod non poteſt quis eſſe dominus & hæres: ſo that you may now perceiue that this Statute of Ireland agréeth with Glanuill, ſauing that Glanuill dilateth or declares the common Law farther then this Statut doth. Alſo Bracton Lib. 1. ſaith further in his title of Homage, that if the eldeſt daughter in this caſe will preuent the time and take homage before ſhee needeth, ſhée by that leeſeth the benefite of the diſcent, and ſaith, that the reaſon why the ſeruice ought to be done by the eldeſt for them all, is, becauſe the Lord ſhall not be driuen to take his ſeruice by parcell meale: And further ſaith, that although the eldeſt may not haue homage of her ſiſters forthwith but muſt tarrie a tyme, yet ſhall they out of hand do fealtie vnto her, and all the other ſeruices that are to be done, and the eldeſt ſhall do them ouer, which is contrarie to Glanuill, for he ſaith, the other ſiſters ſhall do neither homage nor fealtie. Howbeit Britton fol. 175. agréeth with Bracton, and there ſetteth forth the manner of the fealtis by the yonger ſiſters to be done to the elder and ſaith, that it is at the election of the Lord, whether he will take homage and the other ſeruices by the handes of the eldeſt onelie for them all, or els of euery ſiſter ſeuerally for her ſeruice: for if he might not ſo do, the Lord in proceſſe of time might happely leeſe the wardſhip of the heires of the other ſiſters, becauſe of the wordes in the writ of Ward, which are, that the anceſtors dyed in hys homage, and that would bée hard to trie when the homage was euer done vnto him onelie by the eldeſt ſiſter. And Bracton in his title of Homage ſaith. Cúm quęlibet ſoror de facto acapitauerit domino capitali hoc reuocari non poterit á primogeñ vel eius marito, ſed ſemper quod factum eſt tenebit, quia capitalis dominus qd̃ ei oblat̃ eſt non recuſabit, ſed ſiue tenuerint de domino Rege, ſiue de alio cum homagium factum fuerit ſiue ante tertium hæred̃ ſiue poſt ſtatim ſequentur releuium & alia ſeruicia, and a little before that ſayth, Si plures ſorores de domino

Rege tenuerint in Capite, tunc primogenit missa omnes acapitabunt & homagium facient domino Regi. And therewith agreeth Britton fol. 171. And yet fol. 168. saith, that theldest onely shall do homage vnto the kinge for her selfe and her sisters. Thus haue you now the exposition of the said Statute of Ireland by the old writers, by which said statute and the said writers it appeareth, that this Statute of Prerogatiue is but a confirmation of the common Law, and doth onelie set and declare what the kinges Prerogatiue is when landes holden in chiefe discend to two Coparceners: For in this the king hath a prerogatiue aboue a common person, as well for that they shal severally hold of his highnes, as for that that his highnes shall make the partition: for whether they be of full age at the death of their auncestor or within age, or some of them of full age, & some of them within age, none of them that be of ful age shall haue any liuerie but with a partition, & that for the kings benefit: because that vpon the partition euery one of them shal haue for his portion some part of the lands that are holden of the king in Capite. For if some should houe for their portion onely the lands holden of other, then the king should lose his Prerogatiue in those landes hereafter for euer, because that they that haue them when they shall die, hold nothing of the king in Capite, & so myght the king bee diminished of his auncient rightes of the Crowne, which were against all natural equitie. Wherefore the law was euer they should all hold of the king. And that appeareth by the writes of Liuerie, in which writes there is a Prouiso, that euery one of them shal haue in her purpartie parcell of the landes that are holden of the king in capite: As you may see in the New Natura breuium fol. 259. E. And this Liuerie must be sued with a partition or els it is mistaken, and it cannot bee sued forth vntill such time as all the writs of Diem clausit extremum are come into the Chancerie and returned, as appeareth Liuerie 29. H. 16. E. 3. And then if all the coparceners bee found of full age,

then

then a writ shall go out of the Chancerie to the Sherife to extend the landes, and after the extent returned, a writ shal go to the Escheator to make partition & liuery, according to the extent thereof made, as appeareth in the New Natura breuium fol. 259. But if one of the coparceners be within age and in the kinges ward, then that partition may be made in the Chauncery, & then to haue a writ of Liuerie to the Escheator of her part, or els it may be wholie done in the countrey by the Escheator lyke as they had bine both of full age, that is to say, shée of full age béeing there present in her owne person, and shée that is within age onely by Procheine amy, as it appeareth in the said Natura breuium fol. 261. which writ shalbe returned with the partition, and afterwardes inrolled in the Chauncerie. And it should seeme that if after the writ of Extent returned, she that is of ful age do pray a writ of Liuery with a partition, that shee shall then neuer after haue a reextent, if so be that before it were so highly extended. Like law is it if the partition be not egall, and shée notwithstanding will accept it. But in al those cases shée that was within age, if shée haue to little for her portion, shée may haue a writ of Participatione facienda against her other copercener, or a Scire facias in the Chauncerie vpon the record of Partition that is there, to shew why new partition or extent shall not bée made. By which writ if they bée warned and come not, or come and say nothing, the land shal be releised into the kinges handes, and a new extent made in the presence of the partyes, which if it bée not extended as it should be, they may pray a reextent before partition made: For after partition the praier commeth too late. And thys may yée see in the New Natura breuium fol. 62. H. and in H. 2. C. 3. fo. 20. & Liuerie 6. 13. E. 1. But learne whether shée may defeat the partition by entrie without suyng any such writs or no, because the other are in by matter of record, that is to say by liuerie, whereunto shée is also after a manner partie. So is it not like the case of a stranger

for a straunger that hath eigne title may enter vpon them after liuerie, notwithstanding they haue the possession by matter of recorde. And it is said by Hill. M.17.E.3. fol. 37. that aduowson assigned in purpartie may be defeated by putting debate vpon the presentment without any other proces.

And note, that sometimes the king is to take a detrypment by the liuery with the partition: As take the case to be where some of them bee wythin age, and in the kinges ward, and some of full age, and their auncestor dyed seised not onely of landes holden in chiefe, but also of landes holden of other Lordes, they of full age haue Liuerie with a partition, now the king loses the wardship of as much of the landes that are holden of other as they haue liuerie of, and yet if no partition had bine made the King should haue had the wardship of the whole till the heire had come of full age, as Mombray affirmeth 9.21.E.3.fol.3. And note also that of things entier the kinge shal haue by nonage of one of them the whole, and the other that bee of full age get no part of it, ne yet liuerie thereof ne partition: As take the case to be this, A manor holden of the kinge in chiefe whereunto aduowson is appendant, discende vnto three Coparceners, and one of them is within age and in the kinges ward, the other two that be of full age may sue their liuerie for the land wyth a partition, but not for the aduowson: For that shal wholie remaine to the king during the minoritie of her that is in warde. And thys appeareth Quare impedit 1.M.31.E.3. 9.38.H.6.fo.9. 9.21.E.3.fo.32. And note that if vpon partition made the Escheator returneth that some haue their parts deliuered them, and some not because they sued not to him for it, they that did not sue, may at al times in the Chauncerie sue out a writ vnto the Escheator to haue the same deliuered vnto them, in which writ there shalbe enclosed a transcript of the partition, as it appeareth in the said New Nat. bre. fo.262. & there it appeareth also fol. 263. that liuery with a par-

a partition was sued for landes holden in Burgage: but by likelyhode it was no common burgage: For as it appeareth the heire did his homage for the said landes. And note also that if the coparcener of ful age take ẏ part of her sister which is in the kinges ward by lease or graunt of the king durante minore ætate, by this shee suspendes the partition. For notwithstanding shee haue the one moitie delinered her with the profites of the other moitie, yet when her sister commeth to full age, both they shall sue a new likenesse with a partition, as appeareth in the said New Natura brenium fol. 262. C.

¶ Le Roy auera gard de heire marrie per son pier deins lage de consent. Cap. vj.

SI Mulier ante mortẽ antecessoris sui qui de Rege tenet in Capite, ante annos nubiles maritata fuer, tunc Rex habebit custodiam corporis illius mulieris vsq; ad ætatem, quod consentire poterit. Et tunc elegat ipsa vtrum maluerit habere virum illum cui præmaritata fuerit, vel alium quem Rex ei obtulerit. Nullus qui de Rege tenet in Capite per seruitium Militare potest alienare maiorem partem terrarum suarum, ita quod residuum non sufficiat ad faciendum seruicium suum, sine licẽtia Regis: Sed hoc non consuenit intelligi de membris & particulis earundem terrarum.

This chapter containeth two matters being dyuers in nature, and therefore I intend to seuer and deuide the one from the other, and to adioyne the latter branch hereof to the Chapiter following, because they do entreate both of one thing.

This Statute is but a confirmation of the common Law: For it is written in Gard. 147. 13. H. 3. in thys wyple, Thomas summonitus est ad respondendum Regi,

quare abduxit Helenam filiam & hæredem E. &c. Et dicit quód ipſe per aſſenſum E. in vita ipſius E. deſponſauit prædictam Helenam in facie Eccleſiæ &c. & quia prædicta Helena eſt infra ætatem, & cum ad ætatem peruenerit poteſt conſẽtire matrimonio vel diſſentire, ideo remanet prædicta Helena in cuſtodia domini Regis uſq; ad ætatem vt conſentiat vel diſſentiat &c. Here it is not ſet forth nor expreſſed what is thage in a woman to conſent to matrimonie, and that is all that is to bee ſought vpon this ſtatute: For Bracton in his firſt booke in the latter end of a chapter which hath this paragrafe, ſcilicet, De Minoribus qui debent eſſe ſub tutela & cura dominorum vel parentum ſaith, Quòd fœmina ſeptimo anno ætatis ſuę poteſt conſentire matrimonio, & virum ſuſtinere anno duodecimo, for hee ſaith, Quod fœmina maius eſt capax doli quã maſculus, & qd maturiora ſunt vota mulieris quám viri: So that by him it appeareth that a woman may conſẽt to matrimony after ſhee is vj. peres of age. And ſo I iudge the law was at that time taken. For it appeareth in Gard H. 138. 12. E. 1. that a man that held by Knightes ſernice maryed his heire apparant beeing vnder age, and dyed, the Lord claimed the wardſhip of the bodie, and an iſſue was tended againſt him, that at the time of the ſaid marryage the infant was of the age of ſeuen yeares, and this iſſue was received by the Court for a good iſſue to barre the Lord of the wardſhip of the bodie, quod nota. Howbeit it appeares not by the ſayd booke whether the heire were male or female: And Wangford ſaies H. 35. H. 6. fol. 41. that when a woman is vj. yeares of age, her auncester may then gather ayde to marrie her, which ſaying argueth as me ſeemeth that ſhee is marryageable. And alſo this ſeemes to make with Bracton. Howbeit the law is not ſo taken in theſe dayes. For ſhee cannot now conſent to matrimonie before the age of xij. yeares. This Statute ſpeakes onelie of the heire female, alſo yet Cheney ſaith in 29. 7. H. 6. fol. 10. that the heyre

male

male ſhalbee taken wythin the compaſſe of the Statute by an enquirie, becauſe the ſtatute is beneficiall. And ſo it ſhould appeare Gard 156. 30.E.1. and 128. temp.E.1. where the ſonne was married in the lyke of his auncestor, then being no more then of the age of 6. yeares, and when the child came to thage of xij. yeares the auncestor dyed, and the Court aiudged in this caſe, that the Lord ſhould haue the wardſhip of the bodie, to the intent that if the enfant hereafter ere hee paſſe the age of xiiij. yeares diſagree to the firſt mariage, the Lord may haue the mariage of him. And ſo it may appeare by this booke that thys Statute is but a confirmation of the common law, for euery Lord ſhal haue like aduantage in this caſe, as the king ſhall haue: And therewith agrees Paſton, M.7.H.6. fol.11. adding further to this, that by the order of the common law before thys Statute of Prerogatiue, if the heire would haue ſtand to the firſt mariage when hee or ſhee came to the yeares of conſent, they ſhould haue paied the double value, and by this ſtatute they pay nothing: and therefore the caſe was there, The kings tenant in chiefe hauing a ſonne and heire of the age of xiiij. yeares doth marie him & dieth, the kyng offers the child mariage at the age of xiiij. yeares, which he refuſeth, and holdes him ſelfe to the firſt mariage, and aiudged that the enfant might ſo do, and that for the ſame he ſhould neuer pay the double value ne ſingle of his mariage: And there Balthorp ſaith, that if the woman had died the heire being within the age of conſent, the king ſhould haue had the mariage of the child, notwithſtanding that hee was once maried in the life of his auncester, for it was no mariage, but at pleaſure: And therewith agrees Britton fol. 196. Yea although the wife had died after the yeares of conſent, and before the child had come to thage of xxj. yeares, Quere of thys matter, for I am informed that the law is not taken at this day as the ſaid booke is in 7.H.6.

## ¶ Le Roy auera fine pur Alienation ſon tenant ſans licence. Cap. vij.

DE Serieantijs alienatis ſine licentia Regis, conſueuit Rex arentare huiuſmodi ſerieantias per rationabilem extentam inde faciendam.

It appeareth by Glanuill in the beginning of his ſeuenth booke ca. 1. fo. 44. that euery free man hauing land, whether hee had an heire apparant then lyuing or not, or whether the ſaid heire apparant would conſent to it or not, yet might he giue ſome reaſonable portion of his land with his daughter or any other woman in mariage, or to any man that had don him ſeruice, or in almes to any Religious houſe, or to any other whom he would, ſo the ſaid gift were made in his health, for in extremitie of ſickneſſe he myght not be ſuffered ſo to do, leaſt it ſhould be thought to be done rather of a rage & furie of the mind, which through ſickneſs for the moſt part commeth to men, then of any good diſcretion, & ſo might he in his gift exceede meaſure. Howbeit ſuch a gift in ſickneſs was euer good with the conſent of the heire or with his confirmation. Again if he had many ſonnes, he could not without the conſent of his heire apparāt giue any portion of his inheritance to any of the yonger ſonnes, for ſo might he diſherite theldeſt through affection that the fathers lightly beare towards their yonger ſonne more then towards theelder. But of his purchaſed lands he might giue the yonger a portion whether theldeſt would or not. And if he had none iſſue he might giue away al his purchaſed lāds. But of the lands of his inheritance he might giue away no more but a reaſonable portion. And if the lands were departible amongſt the heirs males, then might the father in his life time giue euery child what portion he would, ſo it exceede not the portion that ſhould diſcend vnto him. And in that caſe whether the gift were of lands purchaſed or of inheritance, it made no matter. Howbeit neither Abbot nor Biſhop might in any of theſe caſes giue any portion of their

lands

lands away, without the kings assent or his confirmation, because their baronies be of the almes of the king, or of his progenitors. Hitherto haue ye heard what Glanuil hath said. After this was the statute of Mag. char. made, where in the 31. cap. thereof it is written: Nullus liber homo det de cætero amplius de terra sua, vel vendat de cetero, quam vt de residuo terræ suæ possint sufficienter fieri domino feodi seruicium ei debitum quod pertinet ad feodum illud. Which Statute is but a confirmation of the common law, as it doth appere by that that is written in Glanuill, for so one that had holde by knights seruice if he might haue bene suffered to alien the greatest parte of his land, hee woulde haue alienes the same peraduenture to holde of him but in Socage or by some small rent, and then hauing so little a liuelihood left vnto himselfe, how had he bene then able to haue done the seruice of a knight, or a man of warre, or what should his lord haue had in warde to haue found one to haue done the seruice? surely little or nothing. Whereby the strength of the Realme might haue much decayed, therefore it was a reasonable lawe to restraine him as me seemeth. Howbeit Bracton in his first Booke vnder the title, Si ille cui datum est rem datã vlterius alteri dare possit, disputes this matter after a sort, that is to say, whether the tenant may enfeffe an other against ỹ lords will or not, & hethere affirmes he may, yea, & that to hold of him by what seruice he will, & calleth it Damnum absque iniuria, seeing that though the wardship be not so good after alienation vnto the chiefe lord as it was before, yet the reliefe is as good in euerie point, and then if the lord be serued either of the wardship or reliefe, he hath all that knights seruice requireth. Howbeit saith hee when the tenant is so disposed to sell his land, the lorde shall be preferred to the sale thereof before a straunger geuing as much as an other will. It seemeth by Bracton that it was verie doubtfull notwithstanding the Statute of Magna charta whether the kings tenant might alien

his

his whole tenancy or not. And therefore was the Statute of Quia emptores terrarum made, where it is prouided that from thencefoorth which is in the 18. yeare of Ed.1. and after Bractons time, it should be lawfull for euerie free man to sell his landes or tenements, or anie part thereof at his pleasure to holde of the chiefe Lord by the same seruice that the feoffor held. Prouided alwayes, that by any such sales there commeth no lands to mortmaine. This Statut remedies the mischiefe that was found in the wardship, but not the other mischiefe, viz. touching the defence of the realme. For when one mans liuing is so dismembred, neuer a one of them is able to do the seruice of a man for want of liuelihood, yea, and much more vnable since this Statute then before. For before where he gaue it to holde of himselfe, he reserued somwhat in place of the land that went from him, whereas now he can reserue nothing of common right. Howbeit notwithstanding that this statute of Quia emptores terrarum, made it lawfull for all other mennes tenants, yet was it not lawfull by the saide Statute for the kings tenants so to doe, that is to say, neither to alien the whole, nor anie parcel therof without ỳ kings licence. And that appeareth by Britton fo. 88. Which speakes generally, that the kings tenant in chiefe can not dismember his fees without his licence. And because that before the time of king E. 1. they might haue alienes without licence to hold of them selues, as other mens tenants might haue done in the like case, and thinking it more lawfull for them so to do after the making the said statut of Quia emptores then before, it was thought good to prouide some staie for ỳ same by his statute of Prerogatiue. And yet by ỳ words of the other Chapter following it appeareth that the kings tenant by grand serieantie, could neuer haue alienes anie landes holden by grand seriеantie without the kings licence. For that was so high a seruice, as Bracton in his first booke in the title de magnis seriеantijs names it Regale seruitium, and saith it was first inuented within this

realme in the time of ꝑ conquest, that they could not dismēber any part therof without the kings licence. For he saith in an other place in the said booke amongst his Writtes of partition, Quod seriantia dinidi non debet, ne cogat̄ rex accipere seruit suum ꝑ particulas. Howbeit since the making of this statute of Prerogatiue, sundry opinions haue risen in these matters, as may appeare by the statute made in the first yere of E. 3. c. 12. which saith in this maner. Item pur ceo q̄ plusours gents du realme soy pleynont deste greues de ceo q̄ terr̄ & tenūts q̄ sont tenus en chiefe du roy, & aliens sans son conge ount este pris a uāt ceux heures en maines le roy, & tenus come forfeits, le roy ne les teigne my come forfeits en tiel case, mes voet & grāt q̄ desormes de tiels terres & tenūts aliens soit reasonable fine pris en le chācerie ꝑ due proces. So ꝙ by this stat. it appeares they take ꝑ lands to be forfeited that were holden of the K. in chiefe, and alened without licence. And so it appeares by a booke in T. 9. E. 3. f. 26. & Quare impedit, 54. 14. E. 3. where Wilby saith, that at this day lāds holde by grand serianty & alened without licence be forfeited: for ꝑ seruice of one mans body cannot be changed into another mans body without the kings assent. Also in the said first yere of E. 3. c. 13. it is prouided in this wise. Et auxi come plusours gents du people soy pleynont deste greues per purchase de terres & tenūts q̄ ont este tenus des auncestors le roy, que ore est come des honours, & messnes tiels tenūts ont este prises en le main le roy, auxy si home ils eussent este ten̄ du roy en chiefe, come de sa corone, le roy voet que mes ne soit home enchefon put nul tiel purchase. By this statute it appeares that if a man hold of the K. as of any honor which is come to his highnes by discent from any of his ancestors, & by reason therof he should not hold in Capite: For that was contrarie to the lawe, as it may appere by the words of the statut, which saith, that the people complained themselues to be greeued hereby, which is to be vnderstanded to be vniustly greeued, for by

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the words in the first Chapter of Prerogativa Regis it appeareth that if it shall be said a tenure in Capite, it must bee of the Crowne of a long time scilicet, ab antiquo de Corona. And that is not when it is but newly come: and the Statute of Magna charta Cap. 3. did helpe this matter by expresse wordes. If such an honour came vnto the Crowne by way of Eschete, but not if it came by way of discent or ante other way. And that Statute doth set forth certaine honours by name, which be not of the auncientnesse of the Crowne, that is to saie, the honour of Wallingford, Nottingham, Bolinbroke, and Lancaster. Therefore hee that holdeth of the king as of these honors, holdeth not of the king in chiefe. But other honours there be which of so long time haue beene annexed to the Crowne, that to holde of them is to holde in chiefe, as it appeareth in the newe Natura brevium folio 256. 2. and b, where one holde of the king as of a certaine honour, to yeelde a certaine rent vnto the keeping of a Castell of Dover: this was there taken to be a tenure in chiefe. And so it was where one holde of his Highnesse, as of the honour of the Abbey of Sparte. Therefore learne what honours be of the auncientnesse of the Crowne, and what not. And there is an other Statute made in the foure and thirtie yeare of the raigne of the said king the 15. chapter, which saith in this wise.

Item accord est & estable, que alienation de les terres & tenementes faits per gents que teignont du Roy Henry beisayle au Roy que ore est, ou des auters royes deuant luy, a tener de eux mesmes, q̄ les alienations eloient en lour force. Saluant toutes foites a nostre seignior le roy sa prerogatiue de temps son ayel, son piere, & son tēps demesne. This latter statute doth argue that the king ought to haue prerogatiue since the time of king Edward the first, and none before. And surely so was the law taken, as it appeares 29. E. 3. Aff. 122. & 124. & 26. li. Ass. pl. 40. & herby to the intent this alienation made in the

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before should not now be brought in question, this Statute was made so that his grace should have fine for all alienations without licence made since king Edw. the first hys time; but not for anie made before. And this shoulde bee the meaning of this Statute, which (under correction) is mistaken by maister Fitzherbert in his Natura breuium fol. 235. Howbeit for mine owne opinion I doe not see by all these Statutes, but that the king hath his Prerogatiue by the order of the Common Law, at least wise as the Common Law hath beene taken since the time of King Edward the first, or else hee coulde not have it nowe, for any thing that I see prouided for him by these statutes. For this statute of Prerogatiue goeth but to that where his tenant in Chiefe alieneth the greatest parte without licence, Ergo he may alien the lesser parte without licence, and so doth the Statute expressely set it forth, except you will saie there be two licences vnderstoode here, that is to saie, a generall licence by the order of the Common Law, and a speciall licence by this Statute, the one to be requisite where anie parcell is sold, the other when the more parcell is sold. Therefore enquier & learne what other mens opinions are vpon this statut. For I find no book to proue it cõmon law before Brittons time, for Glanuille ne Bracton speaketh anie thing of it. And where this Statute of Prerogatiue speaketh onely but of knights seruice, the lawe is otherwise taken. For if one do holde of ỹ kings highnes in Socage in chiefe he can alien no peece without licence. Then let vs see what things may be granted or doone without licence and at what time: and how the tenants that have licence shal pursue the same. The kings tenant that holdeth of him in chiefe may grant a rent charge out of the same without licence as it appeareth 40. lib. Ass. Pl. 5. M. 7. H. 6. fo. 2. For the king by that shall sustaine no detriment. For his highnes nede not to holde it charged except hee will. But if one holde an aduowson of the king or a rent, and granteth ouer the same without licence, the grantee shall pay a fine.

And

And that appeers M.21.E.3.f.31. For there the case was that vpō linerie with a partitio an aduowson was allotted solely to one of the coparceners, And after by compositiō betwēn her and her fellowes she was agreed to leaue the aduowson againe in common amongest them all, and to present by turn, And adiudged that this was an alienatiō, for the which she must make a fine. For before she was tenant solely, & now she is become tenant iointly againe with her fellowes. The like lawe is it, if there be Lord, mesne and tenant, the king is the Lord and the mesnalties is holden of him in chiefe, if the mesne release to the tenant without licence, he shall pay a fine, as it appeareth 38.lib. Assil.M.17. and yet the release goeth there by way of extinguishment: but what then? He holdeth nowe by the seruice the mesne did, that is to say, in chiefe, and so thereby the tenancie is altered. The selfe same Lawe is it if two iointenants be, and the one release to the other without licence, the king shall seise for a fine, as it appeareth 40.lib.Assil.M.5,M.8. Henrie the fourth fol. 8. For the like reason that is made in the case of the coparceners before. But where there is nothing but a bare right released which goeth by way of extinguishment otherwise it is. For they of the Exchequer vpon a fine sur release onlie, vsed to make out no processe to answeare the king of an alienation. The kings tenant in chiefe may make a lease for terme of yeares without licence, but not a lease for tearme of life, nor no higher interest, as appeareth M. 45. Edward the third fo. 6. and in the newe Natura brevium fol.175. Then at what time or how he should pursue his licence: if the licence be granted by one king, he can not by vertue thereof alien in the time of an other king, as it appeareth Office de court 29.M.2. Edward the third. Like Lawe if the lands be in the kings handes for Primer seisin or alienation without licence, at which time the king doth licence his tenant to make a feoffement, he can not make this feoffement till the lands be out of the kings

hands,

hands, as appeareth H. 21. Henrie the seauenth fol. 7. Also he that hath licence may not varie from it in any poynt: Fines 124. H. 18. Edward the second. As if the king licence the Abbot and Conuent two, to make a feoffement, and the abbot sole will make it, this is voide, as appeareth H. 21. Henrie the seauenth fol. 8. And there Frowicke said, that if the king licence me to make a feoffement by deede, I can not make it without deede: Nec è contrario. And herewith agreeth the Booke of H. 3. Ed. 3. 5. Where the licence was to leuie a fine of the mannor of Dale to finde two chapleines, and he would haue leuied the fine leauing out the chapleines, and could not be suffered. And H. 30. Edward the third 17. the licence was to leuie a fine of the mannor of Dale yeelding a rent, and he would haue leuied the fine of the mannor with a forezyse, that is to saie, excepting certaine acres parcell of the mannor yeelding the rent, and could not be receiued so to do, for that should not agree with the licence, which would the whole mannor to be charged with the rent. But if there had beene no rent reserued, it seemeth he might haue alienes any part of the mannor by a licence of alienation of the whole manor: Tamen quære. For it should seeme to be within the wordes of this statute which would you should not dismember the kings fees, and learne if the king doe licence his tenant to make a feoffement, whether hee may make it vppon condition or not, for they vse when a conditionall feoffement is to be made, to expresse the condition within the licence, and if the condition be to make an estate againe to the feoffor, al this goeth vnder one fine and in one licence. H. 35. Henrie sixt fol. 52. And note, that if the Iustices before whome the fine shall be leuied be enformed that the lands are holden of the king, and so appeere to them by any record, they wil not take the fine till they haue seene the licence, nor yet engrosse it vntill they haue receiued a writ out of the Chancerie called Quod permittat finem illum leuari, by which they may be fully certified of the kings

pleasure,

pleasure, which writ appeareth in the newe Natura brevium fo.147.C. And that they haue thus vsed, it appeareth 4. Edward the second Fines 115. But they neuer vsed to do vpon a recouery in these common Writtes of entre in the Post, because the recouerer in such case shoulde pay no fine, for it was no alienation since the recouerer claimed not in by the tenant. But nowe by the Statute made in the 32. yeare of king Henrie the eight cap. 1. it is ordained that the recouerer in such case should pay a fine for alienation, And note, that if an alienation be made without licence the pardon is most commonly made vnto the feoffee and not to the feoffer. And so I suppose it ought to be, because the wrong groweth by the entre of the feoffee which hath entred the kings fee without his licence. And therefore the case is 14. H.6.f.26. that where the kings tenant alieneth without licence, and take estate againe to him and to his wife in taile, the remainder ouer to his right heires and dieth without issue, and the king pardoneth the wife all maner of alienations, this was thought good to exclude the K. of his fine that he should haue had for y said alienation. And it is further to be noted that the licence must be purchased vpon a true suggestion or else it is voide. For if the kings tenant in taile pretending to be tenant in fee simple will purchase licence to make a feffement, this is a void licence as it appeareth 29. Assi.30. and 40. lib. Assi.36. And in all cases where the kings tenant in chiefe will dismember his tenancie, that is to say, alien anie parcel therof without licence, the king may distraine for his whole rent in the parcell so aliened, but if he haue the kings licence to make such alienation, the alienee shall haue a Writte in the Chauncerie called De deonerando pro rata porcione, that he shall not further be charged then after the quantitie of the portion that he holdeth. This Writte you may see in the newe Natura brevium fol. 235.A.

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¶ Le Roy auera ſon preſentment nient obſtant que Leueſque ad fait collation pur laps.

Cap. viij.

DE Eccleſijs vacãtibus quarum aduocationes ſpectant ad Regem, & alij preſentauerint ad eaſdem, Ita quod contentio inter dominum Regem & alios oriatur, ſi Rex per conſiderationem Curiæ præſentationem ſuam recuperauerit, licet poſt lapſum ſex menſium á tempore vacationis, nullum occurrit ei tempus, dum tamen Rex preſentauerit infra tempus ſex menſium.

Of this Chapter I finde nothing neither in Glanuill, Bracton, nor Britton, ne in any other old writer before the making hereof, ſauing that I find this text both in Bracton and Britton. s. Quod nullum tempus occurrit Regi, which Bracton in the beginning of hys ſecond booke vnder the title, Quę res dari poſsit, applyeth vnto liberties appertayning vnto the Crowne, ſaying in this wiſe. Quòd ille qui huiuſmodi libertatem ſibi vendicat, doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate, defẽdere non poterit, quamuis pro ſe prętendat ſeiſinam longi temporis: diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget, nec in iſto caſu currit tempus contra Regem, nec incumbit ei probatio quod ad ipſum pertineãt, cum conſtare debeat ſingulis, quod huiuſmodi de iure gentium pertineant ad Coronam: Sed ſunt alię res quę pertinent ad Coronam quę non ſunt ita ſacræ, quin transferri poſſunt, ſicut ſunt fundi, terrę & tenementa & huiuſmodi, per quę Corona Regis roboratur, & in quibus currit tempus cõtra Regem, ſicut contra quamlibet priuatam perſonam. Thus it appeareth by Bracton, that this text doth not ſerue the king in all caſes, for preſcription ſhall hold ſome time agaynſt the king in ſuch

things as a man may preſcribe in, as it is common in our bookes, that one ſhall preſcribe for waſte and ſtraife, & ſuch like againſt the king. And alſo it appeareth in the booke in Trauerſe 47. A.8.H. 5. that the king may ſurceaſe his time: as where it is found that tenant for terme of lyfe hath forfaited his eſtate to the king, wherby the king ought to ſeiſe: if his grace ſeiſe not, but tarrie til he be dead, ſo that he in the reuerſion entereth, he cannot then ſeiſe, and ſo it may appeare vnto you, that though this bee an auncient tert, Quod nullum tempus occurrit Regi, yet in caſes it doth: And where the tert is onely appointed by this ſtatut to ſerue where the Biſhop taketh the benefit by Laps, yet by an equitie it is taken in ſome caſes to extend to a plenartie, that is to ſay, where a ſtraunger hath preſented, and his Clerke is in by fire Monethes: as take the caſe to be where the king hath aduowſon in ward, and a ſtranger vſurpes, and his Clerk is in by fire Monethes before the king bring his Quare impedit, yet ſhall his plenartie be no plée againſt his highnes, but that he ſhall recouer: and the reaſon of it is, becauſe els the king ſhould be without remedie. For a writ of right he cannot haue, hauing but an eſtate in the thing as gardian, Whereforе in this caſe, Nullum occurrit ei tempus: for els it ſhould appeare that a ſtranger might hold a thing meerly by wrong againſt him with out any good ground or beginning that can be intended of it, which caſe is agreed P.18.E.3.fo,16. and P.43.E. 3.fo.14. But yet in this caſe the king may not put out the Incumbent which is admitted, inſtituted, and inducted in the benefice without ſuit, that is to ſay, Quare impedit, becauſe it is ſo prouided by the ſtatute of 25.E.3.cap.3. and 13.R.2. cap.1. Like law is it, if the kinges tenant be ſeyſed of a manor holden in chicke, to the which aduowſon is appendant, and alieneth the manor wyth the aduowſon without lycence, after the Church becomes voide, and a ſtraunger vſurpes, and ſo twentie vſurpations one after

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an other, and afterwarde theſe alyenations wythout liy-
cence are found by office and the Church becomes voyde;
the king ſhall preſent notwithſtanding thoſe vſurpations,
and if the Church be full, his highnes may haue a Quare
impedit againſt the Incumbent, Cauſa qua ſupra. And
this appeares in H.4. E.3. folio 2. But if the king bée
ſeiſed of an aduowſon in his demeſne as of fée, it ſéemes
that plenartie ſhalbée a good pleé agaynſt hym, for there
his highneſſe hath remedie prouyded him, that is to ſay,
by writ of Right, and ſo is the opinion of Shard and
Wilby, P. 18. E.3. fol. 15. Quære, for in the booke of
P. 43. E. 3. fol. 14. the defendant durſt not abyde by
the pleé, but trauerſed the title that was made for the
kinge. And learne whether plenartie bée a good pleé a-
gaynſt the Quéene whych holdeth for terme of lyfe, the
reuerſion to the king, for thys caſe is alſo left at large in
P. 18. E. 3. fol. 13. Nowe to the Statute where the
wordes bée, that no Laps ſhall holde againſt the king, if
he preſent within ſixe Monethes: Theſe wordes, If hée
preſent wythin ſixe monethes, bée voyde, for though hee
preſent not, yet title of Laps ſhall not take place agaynſt
him by thys Statute: And therefore the booke is P. 18.
E. 3. fol. 21. that where the Laps was incurred in the life
of the kinges tenant, and before the Ordinarie preſented
the tenaunt dyed, and it was adiudged that the kinge
ſhould haue the preſentinent, and not the Ordinarie.
But peraduenture you will ſay, in that caſe the kynge
could not preſent wythin the ſixe Monethes, becauſe hys
tenant was yet alyue. What ſay you then to this caſe?
If the Laps dyd incurre after the death of the kynges te-
nant, and before office found, the king notwythſtanding
ſhall haue the preſentment after office found, as it is a-
greéd P. 14. H. 7. fol. 22. and yet there the king myght
haue preſented after the death of hys tenaunt before of-
fice found, and did not. And in the ſaid booke of P. 14.

H. 7. fol. 21. it is left a queſtion, ſeeing the Ordinarie cannot preſent by laps againſt the king, how, and in what maner the cure ſhalbe ſerued in the meane time, that is to ſay, betweene the Laps and the kinges preſentment, ſome thinke in that caſe that the Ordinarie ſhould preſent one for the meane time, which ſhould be remouable alwayes at the kinges pleaſure: And ſome other thinke hée ſhould ſequeſter the fruites to finde the cure, Ideo quære. And Bracton libro tertio, in the writ of Darreine præſentment ſaith, that this title of preſentment by Laps was giuen to the Ordinary by a conſtitution made in the Counſell of Lateranenſe.

## ¶ Le Roy auera le gard de terres de Ideots. Cap. ix.

REx habebit cuſtodiam terrarum fatuorum naturalium capiendo exitus eorundem ſine vaſto & deſtructione, & inueniet eis neceſſaria ſua de cuiuſcunque feodo terræ illę fuerint, & poſt mortem eorum reddat eam rectis hæredibus, ita quod nullatenus per eoſdem fatuos alienentur, nec quod eorum hæredes exheredentur.

This Prerogatiue began in the time of King Edward the firſt, as it ſhould ſéeme to mée, becauſe I find none that wrote of it before Britton, for Bracton ſpeakes but a little of Ideotes, and that in his fifth booke in the title de Exceptionibus againſt the plaintife, where hée ſaith: It is a good exception to the perſon of him that complayneth, or bringeth an action, to ſay, hée is a fole naturall, Quia tales non multum diſtant á brutis, qui ratione carent: nec valere debet, quod cum talibus agitur, ſed tamen diſcuſsio hũmodi exceptionis diſcretioni Iudicis relinquitur. And ſaith,

saith, like law is it of him that could neuer heare nor speak from the time of his natiuitie. Et quod inuenienda sunt eis necessaria, quod vixerint per officium Iudicis pro qualitate persone, & hæreditatis quantitate, si heres esse debeat, & si semel auctoritate curatoris acquisierit, si fuerit inde eiectus, recuperabit per Assisam, sicut minor.

By this it appeares, that the king had no Prerogatiue but the Iudge: Howbeit *Britton fol.* 167. saith, that the king ought to haue his Prerogatiue herein, for these bee his wordes, Et pur ceo que aſcun foits auient, que aſcun heire eſt forte naſt, par quoy il neſt my able a heritage demander & garder: Volumus que tiels heires de qui que ils vnques teignont males & females demurgent en noſtre garde ouesque toutes lour heritages: Sauant a cheſcun ſeignior toutes auters ſeruices que a luy append de terre tenus de luy, & icy remaynont en noſtre garde tannt, come ils durant en lour ſotie, & ceo ne voilomus nous my de ceux que deueignont ſotes per aſcun maladie. Vpon these wordes of Britton I note three things, one is, that the king shall not haue the custodie during their lyues, but during their Ideocy, the second, notwithstanding the lande is in the Kinges hands, yet the other Lords shall haue their seignories, which is by way of petition, as I take it: and the third is, that the other Lord shall not haue the wardship of the heire nor of his landes, but onelie the kinge, Which three thinges by this Statute of Prerogatiue are not so plainely set forth: As also by this Statute it appeares, that the King shall haue the custodie of such Ideotes during their lyues, for the wordes bee: Et post mortem eorum reddat eam rectis hæredibus, and not before. The manner how the king shall come to this Prerogatiue, appeares by a booke case Liuerie 30. T. 16. Ed. 3. where Sharde sayes, That when the Kinge is informed that there is such an Ideot, his highnesse shall

send for him, and cause him to be brought before his Chancelor, or some other whom he shall appoint, and if by examination hee bee found an Ideot, yet his highnesse ought not to seise his landes, vntill such time as hee be found an Ideot by office. And in the New Natura breuium folio 232. B. it appeares, that the King appointes all this matter to the Escheator or Sheriffe, both to examine and inquire. In which said Natura breuium fo. 202. E. it appeares, that this office, when it is found shall haue relation á natiuitate, to auoyde all meane actes done by the Ideot, that is to say, his feoffement or release: But learne and inquyre whether such feoffees shall bee put out by office without any Scire facias to bee awarded against them. In Scire facias 10. P. 18. E. 3. and 116. P. 32. E. 3. and 50. Lib. Ass. P. 2. a Scire facias was awarded in that case, and learne also whether the office shall haue relation for the profites from the tyme of his natiuitie, or onely from the finding of the office.

Then to the exposition, the wordes bee: Rex habebit custodiam terrarum fatuorum naturalium, By these wordes it appeareth, that hee must bee a fole naturall, that is to say, a fole á natiuitate: for if hee were once wise, and became a fole by chaunce or misfortune, the King shall haue the custodie of him: and so it is agreed in P. 18. E. 3. Scire facias 10. And also in the New Natura breuium folio 233. and the manner of the tryall of him to bee a fole naturall appeares in the sayd Natura breuium folio 233. That is to say, if hee cannot tell to 11. pence, or tell his age, or who was his father and mother, or such like thinges, whereby it may appeare, hee hath no kinde of vnderstanding in that, that is either for his profite or damnage. But if hee bee learned, and apt to learne, then is hee no Ideot, as Master Fitzherbert there thinkes. And Greene sayth in Sauer de default 37. P. 31. Ed. 3. That if hee bee able to beget either

either Sonne or daughter, hée is no sole naturall. The wordes of the Statute be further: Capiendo omnes exitus eorundem sine vasto & destructione, & inueniet eis necessaria sua.

By these wordes it appeareth, that the king may take the profites to his owne vse, finding them their necessaries. And therefore in the booke before of 31. E. 3. the king did let the land vnto one of the Cosins of the Ideot, yelding a rent. But these wordes, Inueniet eis necessaria, are not onely meant to Ideots themselues, but also to all them that hange vpon them, as their wife, children and familie. And also by these wordes, Sine vasto & destructione, it appeareth, the king is bound to reparations of their landes and tenementes. The wordes bée also, De cuiuscunque feodo terrę illę fuerint, By these wordes Gard 5. H. 3. E. 2. it should seeme the kinge should bee preferred in this title of Idocie before any other Lord which might claime the Ideot as his warde. Howbeit learne what other men thinke therein. Et post mortem eorum reddat eam rectis hæredibus, By which wordes it should appeare, that the king should haue the custodie during the lyfe of the Ideot, and that then an Ouster le maine in nature of a Liurie shall bée sued of the same out of the kinges handes: But whether it shall bée made with the issues and profites from the tyme of the Ideots death, or onely but from the time of the tender of the Ouster le maine learne: But if the landes that the king had so in custodie bée holden of him in Capite, then notwythstanding these wordes of the Statute, yet the king shall haue Warde, primer seisine, and all other Prerogatiues, as if his tenant in chiefe had dyed seised thereof bée-ing no Ideot, as it may appeare in the New Natura breuium fol. 256. D. And there it appeares fol. 252. H. also, that although the Ideot held no landes of the king, yet a

Diem clausit extremum, shalbée awarded after his death to inquire what landes hée dyed seised of, of whom they are holden &c. And it is to bée noted, that if one bée found Ideot by office, and before the king seised the landes, that Ideot dies, yet the king shal seise, because of these wordes in the Statute, scilicet, Post mortem eorum reddat eam rectis hæredibus, which his grace cannot do but upon a seisure, and this appeares P. 18. E. 3. Scire facias 10. And note also, that if there discende to an Ideot no possession in landes, but onelie right, bée it ryght of entrie, or title of entrie, or right of action, the king shall not enter and haue the custodie of the same, as appeares in P. 1. H. 7. fol. 24. and P. 2. H. 7. fol. 3. and yet if his tenant of landes holden of him by knightes seruyce bée disseised, and dyeth, his heire within age, the king shall enter and hold the same in warde: And therefore learne what is the reason that should make a difference in these actes. The wordes be further, Ita quod nullatenus per eosdem fatuos alienentur, nec quod eorum hæredes exhæredentur. By these wordes it appeareth, the landes cannot bée alyened by the Ideot, nor the heires disherited: And therefore if the Ideot make a feoffement, or a release of his landes, and that found by office, the kynge shall auoyde it, as I haue before noted, and so lykewise his heires after his death by force of these wordes of the Statute. And yet it appeares Sauer default 37. P. 31. Ed. 3. that a recouerie by default passed against an Ideot, but execution of the iudgement was stayed, because of the kinges possession: Which proues, that notwythstanding the kinge haue the possession during the Ideots lyfe, yet hys highnesse hath no fréeholde thereby, but onelie a bare custodie, for the fréeholde remaynes in the heire. And therewyth agrées H. 17. Edwardi 3. fol. 11. But what then? this recouerie is not lyke to this alienation, for by the recouerie the Ideots heire is not dysherited

ritted by the acte of his auncestor, if to be that the recouerie were vpon a good title. And it appeareth in P.33. Henrie the sixte fol. 18. that an ideot shall not bee receiued to pleade by gardeine, or Prochein amy, but her himselfe shall appeare in proper person in euerie action brought against him, and whosoeuer will pleade best for him, shal be admitted: and learne and enquier if the Ideot bee but tenant for terme of life or yeares, if the king shall haue his prerogatiue therein or not, because the Ideot can not alien that land vnto the disherison of his heire: and if hee shall, howe the lesser shall punish the waste done in the Kings tyme. And learne also whether the king shal haue the goodes of an Ideot, as well as the land. Then last of all if one be found Ideot which is none indede, the maner howe hee shall auoide this office appeareth in the newe Natura breuium folio 233. a. that is to sate, hee that is falsely founde to be an Ideot, either by him selfe or his friendes, shall come into the Chauncerie, or before the Chauncelour of England and the kings Counsell, and pray to be examined of his Ideocie, or hee may sue a writ out of the Chauncerie to him that hath the keeping of him, to bring him before the king and his Counsell to bee examined, and if hee bee founde vppon his examination to bee no Ideot, then by that is the office and all the rest of the Processe auoided wythout anie further trauerse. Howbeit where a Scire facias is awarded against the feoffee of the Ideot, there the feoffee appearing vppon the Scire facias may trauerse the Ideocie, as it appeareth hee did in the Booke before Scire facias. 10. P. 18. Edward the third.

And note, that by a Statute made in the two and thirtie yeare of the raigne of king Henrie the eight the fiue and fortie Chapiter, Ideots and their landes be in the suruey of the Courte of Wardes, and the same Courte may let and set their lands, but not to graunt the custodie of their

bodies

bodies for anie wordes that I can perceiue in the same statute.

¶ Le Roy purueiera pur luy que nest de sane memory. Cap. xi.

ITem rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis suæ, sicut quidam sunt per lucida interualla, quod terrę & tenementa eiusdem saluo custodiantur sine vasto & destructione, & quod ipse & familia sua de exitibus eorundem viuant & sustineãtur competenter, & residuum vltra sustentationem eorundem rationabiliter custodiatur ad opus ipsorum, ita quod prædictæ terræ & tenementa infra prædictum tempus nullatenus alienentur, nec rex aliquid de exitibus recipiat ad opus suum. Et si obierit in tali statu, tunc illud residuũ distribuatur pro anima eiusdem per consilium Ordinarij.

It appeares by Bracton in his fift Booke amongst the exceptions to the person of the plaintife, that it is a good exception, to say, that he that is demandant or plaintife, is of Non sane memory. For these be his wordes, Competit etiam tenenti exceptio peremptoria ex persona petentis, si petens furiosus fuerit vel non sanę mentis, quod discernere nesciat, vel quod omnino nullam habeat discretionem: tales non multum distant à brutis, q̃ ratione carent, nec valet quod cum talibus agitur durante furore. Possunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum: quod autem actum fuerit cum talibus tempore quo dilucidis gaudent interuallis ratum erit, acsi cum alijs ageretur, siue furorem suum simulauerint, siue non: acquirere quidem non poterunt in ipso furore, vel cum non fuerint sanę mentis aliqui, quia consentire non possunt, nec acquisita alienare vel dare, quia alienationi

oni non magis conſentire poſſunt quam acquiſitioni, ſed ſeiſinam retinent, quia animum mutare non poſſunt, quem acquirendo dum eſſent ſanæ mentis habuerunt, & furor ſuperueniens nihil adimit non maius quã morbus incurabilis, ſicut lepra: ſecundum quod dicitur, quod multa impediunt contrahendo, quę non dirimunt contractum, & ita ſunt multa quæ impediunt promouendo quæ non deijciunt iam promotum. Et talibus de neceſsitate dandus eſt tutor vel curator.

So it appeareth by Bracton, that in his time it was thought expedient, that ſolke that were deſtraught ſhould haue a tutor, or one that ſhould take the charge of them, which office ſince is reuolued vnto the king, and made parcell of his Prerogatiue. For as Fitzherbert in his Natura breuium. fol. 232. very well ſaieth. The king is the protector of all his ſubiects, and of all their goodes, landes, and tenements, and therefore of ſuch as can not gouerne themſelues, nor order their landes and tenementes, his grace (as a father) muſt take vpon him to prouide for them, that they themſelues and their things may be preſerued. And becauſe that lunacie or madneſſe is not from the time of ones birth (as Idocie is) but commeth ſometimes by fits or courſes, his grace therefore can claime no certaine intereſt in the lunatike perſon, like as he may doe in the Idiot: Gard. 5. H. 3. Edward the third. And therefore it is ordained, that his grace ſhall prouide for ſuch in the time of their ſaid Lunacie or maladies, that they or their familie may be ſuſtained, and their things preſerued accordingly, as it is ſet forth in this Statute. And learne whether the kings intereſt is ſuch, that after the death of the lunatike, or the recouerie of his wittes againe, there muſt bee an Ouſter le maine ſued, as it is ſued in the caſe of the Idiot, or elſe that the kings intereſt is anoided maintenant by the death, or recouery againe of the lunatike perſon.

qLe Roy

## ¶ Le Roy auera wrecke, ballenas, & ſturgiones. Cap.xi.

ITem Rex habebit wreckum maris per totum regnum, Ballenas & Sturgiones captas in mari vel alibi infra regnum, exceptis quibuſdam priuilegiatis locis per Regem.

This prerogatiue the king euermore had by the order of the common Lawe, as may appeare by Bracton in his ſecond Booke vnder the title Quæ res dari poſsit, where hée ſaieth in this wiſe, Sunt etiam aliæ res quæ pertinent ad coronam propter priuilegium Regis, & ita communem non recipiant libertatem, quin dari poſſunt, & ad aliud transferri, quia tranſlatio nulli erit dãnoſa niſi ipſi Regi ſiue Principi. Et ſi huiuſmodi res alicui conceſſę fuerint, ſicut wrekum maris, Theſaurus inuentus, craſſus piſcis, ſicut Ballena & Sturgio, & alij piſces regales, oportet, ſi queſtio inde habeatur, quod ille qui huiuſmodi libertatem ſibi vendicat, doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate defendere non poterit, quamuis proſe pretendat ſeiſinam longi temporis: diuturnitas enim temporis in hoc caſu non minuit iniuriam, ſed auget, nec in primo, nec in ſecundo caſu currit tempus contra Regem, nec ad ipſum incumbit probatio quòd ad ipſum pertineant, cum conſtare debeat ſingulis, quod huiuſmodi de iure gentium pertineant ad coronam.

And alſo in an other place of the ſaid Booke vnder the title De liberratibus, quis eas cõcedere poſsit, he ſaieth: Habebit Rex præ cæteris omnibus in regno ſuo priuilegia de iure gentium propria quæ de iure naturali eſſe debent inuentoris, ſicut Theſaurus, wrekum, craſſus piſcis, Sturgio, Waiuæ, quæ in nullius bonis eſſe dicuntur, & dicuntur priuilegia, quæ quamuis ad Coronam

ronam pertineant, à corona ſeparari poſſunt, & ad priuatas perſonas transferri, ſed de gratia ipſius Regis ſpeciali, cuius gratia & conceſsio ſpecialis, ſi non interuenerit tempus à tali petitione regem non excludat, & in hoc caſu comprobatione non egeat, quia nullum tempus currit contra eum.

And in this agreeth Britton fol. 26. and fol. 85. ſo that by theſe Writers it ſhoulde appeare, that at this time no man might preſcribe in wreke de le mere. And that the Lawe was then ſo taken it may appeare by theſe wordes within the Statute, ſcilicet, exceptis quibuſdam priuilegiatis locis per Regem, which doth argue, that that muſt be by the kings grant, for no place can otherwiſe be priuileged by the king. Howbeit Hull and Thirning in M. 11. H. 4. fol. 16. thinke that a man may preſcribe in wreke de la mere: tamen quære, For this Statute, and Britton and Bracton, are ſince the time of limitation, that is to ſaie, king Richard the firſt. The wordes of the Statute be farther, Ballenas & Sturgiones. Bracton in his ſecond booke vnder the title of wreke de la mere ſaieth, Quod de Sturgione ita obſeruatur, quod rex habebit illum integrum propter ſuum priuilegiũ. De Ballena vero ſufficit (ſecũdum quoſdam) ſi Rex inde habuerit caput, & Regina caudam.

So in Bractons time it was doubted by the common law, whether the king ſhoulde haue the great fiſh called Thirpole wholy or not. And ſo likewiſe in Brittons time, as it may appeare in his booke fo. 27. which now this ſtatute hath made cléere, and without queſtion.

¶ Le Roy auera leſchetes des terres des Normans & aliens, de qui que ils teign̄, ſauant les ſeignories as ſeigniours. Ca. 12.

ITem habebit eſchaet de terris Normanorum, cuiuſcunque feodi fuerint, ſaluo ſeruitio quod pertinet ad capitales

capitales dominos feodi illius, & hoc ſimiliter intelligendum eſt, ſi aliqua hereditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem Regis Franciæ, de tempore Regis Iohannis, & non ad fidem Regis Angliæ, ſicut contingit de baronia Monumetæ poſt mortem Iohannis de Monumeta, cuius heredes fuerunt de Britañ vel alibi, de feodis aliorum recuperauerit Henricus plures eſchaetas de terris Normannorum occaſione prædicta, & eas contulit tenendas de capitalibus dominis feodi per ſeruitia inde debita & conſueta.

It appeareth by the Chronicles, that king John was the laſt Duke of Normandie, and that in his time Normandie was loſt, whereuppon king Henrie his ſonne, as it may appeare by the latter clauſe of this Chapiter, recouered diuerſe eſchetes of land wythin this Realme holden by Normans, which after they begamne to adhere vnto the French king, the kings enemie, and became traitours vnto his Highneſſe, they forfaited all their landes by order of the Common Lawe vnto the King, of whome ſoeuer they were holden. Howbeit in ſuch caſes, after the forfaiture if the king had geuen theſe landes vnto anie other, he might not haue geuen them to hold of himſelfe, but onelie of them of whome they were before holden, as this Statute plainely declareth, that King H.3. ſo did. And likewiſe in P. 20.E.3.Aſſ.124. H.46.E.3. Petition 19. it appeareth, that if the king do otherwiſe, his patentée ſhallbe expelled, and made to holde of the lordes of whom the landes were holden before the treaſon, and that by a petition of Right to be ſued to the king for the redreſſe of the ſame, for other remedie haue they none, & diſtraine they may not, as appeareth in the newe Natura breuium. fol. 159. A. And further it ſhoulde appeare by the ſaid Booke of 20. Edward the third, that the King ought not to retaine ſuch land in his owne handes no whit, but muſt diſpoſe them ouer to holde of them that were Lordes

thereof

thereof at the time of the treaſon committed. Hereby may you gather, that this Statute in his firſt branch is but a confirmation of the Common Lawe, and that long time before the making hereof king Henrie the third had this Prerogatiue, as it dooth manifeſtlie appeare in the latter branch thereof. And alſo by Bracton in his firſt booke in the title De cuſtodijs & maritagijs dominorum, and likewiſe in Britton folio 28. The wordes of the ſtatute be further: Hoc ſimiliter intelligendum eſt, ſi aliqua hereditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem Regis Franciæ, de tempore Ioh. Reg. Angliæ, ſicut de baronia Monumetæ poſt mortem Iohannis de Monumeta, cuius heredes fuerunt de Britannia vel alibi. By this branch it ſhould appeare, that at this time men of Normandie, Gaſcoine, Guyon, Angeo, and Britaine, were inheritable within this Realme as well as Engliſh men, becauſe that they were ſometime ſubiect vnto the king of England, and vnder their dominion vntill king Johns time, as is aforeſaide, and yet after his time thoſe men (ſauing ſuch whole landes were taken away for Treaſon) were ſtill inheritable within this Realme, till the making of this Statute. And in the time of peace betweene the two kings of England and France they were anſwerable within this Realme, if they had brought anie action for their landes and tenements, as it doth plainely appeare by Bracton in his fift Booke, in the title De exceptione quia alienigena, for theſe be his wordes: Eſt autem alia exceptio quę competit tenenti ex perſonis petentis, propter defectum nationis quæ dilatoria eſt, & non perimit actionem. Vt ſi quis alienigena qui fuerit ad fidem regis Francię, & actionem inſtituit verſus aliquem qui fuerit ad fidem Regis Angliæ, talis non reſpondeatur ſaltem, donec terræ ſint communes, nec etiam ſi Rex ei conceſſerit ſpecialiter placitari, quia ſicut Anglicus non auditur in placitando aliquem de terris & tenementis

mentis in Francia, ita non debet alienigena & Franci-gena, qui fuerit ad fidem Regis Franciæ audiri placitando in Anglia.

Note here, that he ſaieth, that this exception is but dilatorie, and not peremptory, which proueth, that he ſhal haue his action at an other time, that is to ſaie, in the time of peace. And alſo hée ſaieth after, Donec terræ ſint communes, which is as much to ſay, vntill ſuch time as there is peace betweene France and England. Alſo Bracton in his third Booke vnder the title, Quod mulier oſtendat warrantum per quem petit dotem, ſaieth: Si warrantus fuerit ad fidem Regis Franciæ, & excipiatur de warranto, remanebit dotis exactio in ſuſpenſo imperpetuum, vel ad tempus ſaltem donec terrę fuerint communes.

This warrant of Dower is the heire of the huſband, for by the auncient lawe by Glanuill lib.6. cap.16. If a woman had brought her writte of Dower againſt anie other, but the heire, he was not bounde to anſweare her Dower, vntill ſuch time as ſhe had brought forth her warrant, that is to ſaie, the heire. In like caſe after ſhée is endowed, ſhée is not bound to anſweare vnto anie other without the heire, and if it might appeare, that the heire had no right in the two parts, then ſhould ſhée be barred of her action of Dower, as it appeareth in the caſe before, that his right is ſuſpended when hée is a French man, and the two Realmes at warre. Howbeit it appeareth, as I haue ſaid before, that this exception is not peremptorie, but that after the two Realmes be againe at peace, ſhée ſhall haue her Dower, Dower. 179. 9.4. Henrie the third.

The wordes of this branch be alſo in the copulatiue, that is to ſaie, that the anceſter muſt be of the allegeance of the French king, and that the heire of the ſaid anceſter is borne in the part beyond Sea. I put caſe then that the anceſter were of the allegeance both of the one king

and

and the other, that is to say: the French king, and the king of England, whether is this within the compaſſe of this Statute? For *Bracton* in his ſaid 5. booke vnder the title De Exceptione quia alienigena ſatth. Quod ſunt aliqui qui ſunt ad fidem vtriuſq;, ſicut fuit W. Comes Mareſcallus & manens in Anglia, & Michael de Seins manens in Francia, & alij plures, & ita tamen quod ſi contingat guerrã moueri inter Reges, remaneat perſonaliter quilibet eorum cum eo cui fecerat ligeantiam. Whereby it ſhould appeare that of ſuch as were in allegeance to both kinges, the king ſhould haue no Eſchetes of their landes. For the wordes of the ſtatute bée not onely, ad fidem Regis Franciæ, but alſo, et non ad fidem Regis Ang. Ideo quere. And who ſhalbée inheritable at this day that bée borne in the parties beyond the Sea, and who not, See the Statute thereof made in the 25. yere of king Edward the third, de Natis in partibus tranſmarinis.

¶ Si lheire le tenant le Roy en chiefe entre auant Liuerie, nul franktenement luy accrue, & la feme perdra ſa Dower. Cap. xiiij.

QVando aliquis qui de Rege tenet *in Capite* in fata decedat, & hæres eius ingrediatur tenementum qd' anteceſſor ſuus tenuit de Rege die quo obijt, antequam fecerit homagiũ Regi, & ſeiſinã ſuam ceperit per Regem, tunc nullum accreſcit ei liberum tenementum. Et ſi obierit ſeiſitus per idẽ tempus, vxor eius non habebit dotem de tenemẽto illo, ſicut contingit de Matilda filia Comit' Hereford' vxor Maunſel Mareſcalli, quę poſt mortem Wilhelmi Mareſcalli Angliæ fratris ſui, cepit ſeiſinam caſtri & manerij de Scrogoil, & obijt in eodem caſtro antequam intraſſet per Regem, &

fecisset ei homagium, & vnde concordatum fuit quod vxor non haberet dotem, eo quòd vir suus non intrauit per Regem, immó per intrusionem, sed hoc non intelligatur de socagio & paruis tenuris.

This Statute is but an affirmation of the common law as it may appeare by the case compiled in the same, which was ruled before the making of this statute, and iudged according to the effect hereof. And this Statute seemeth to put a paine vpon the heires that will intrude before they haue sued their liuerie, and taketh away from them the freehold that the law hath els vested in them: And yet it is not taken so generally as the wordes be, but specially and onely of Intrusions after office found, and not before: And therefore if the heire enter after the death of his auncestor, and before office found, and the king pardoneth hym all entries with the profites, this is good and amounteth to a speciall liuerie, so that the heire needeth to sue no moe Liueries, and yet if the Intrusion were after office, and then the king would pardon him it were voide, because that at the tyme of the pardon hee had no freehold, whereupon the pardon might inure H. 3. H. 7. fol. 3. Like law it is, if the heire before office enter and make a feoffement, and the king pardoneth the feoffee, it is good, and yet such a feoffement after office with a pardon were voide for the reason I haue made before. Like law is, if the entrie bee before office, and the pardon after office, this is void, because that by office the king taketh the possession from the heire or feoffee, and then is there no possession whereupon the pardon may inure, and so voide. For the office when it is found hath relation from the death of the kings tenant, if it bee so that the king doth not release his right before the office found. And that appeareth H. 16. Edward the fowerth folio 1. where it is also sayd, that the pardon must bee aswell of profites as of the entrie, or else after office found the king shalbe answered of the pro-

fites,

ſtes, and M. 13. H. 4. fol. 3. there is a difference put betweene the pardon that is made to the heire, and the pardon that is made to the feoffee: For in the caſe of the feoffee the pardon muſt bee ſpecial, rehearſing all the matters. Then let vs ſee further for the endowment, if after the death of the kinges tenant the heire doth not enter but dye before office found, his wife ſhalbe endowed becauſe of a poſſeſſion in law that was in him. P. 1. Hen. 7. 17. M. 38. Edward the third 30. Like law is it if hee dye after office found, and before any entrie H. 4. Hen. 7. folio 1. Like law is it if hee enter before and dye. But if the king be once ſeiſed by office, and the heire die before Liuerie, and the next heire will enter before a Deuenerunt ſued and dyeth, hys wife ſhall not bee endowed, for in that caſe it is an Intruſion after office. For when the king is once ſeyſed by office, this ſeiſin remaines till Liuerie or Ouſter le maine bee ſued. And this caſe is P. 1. H. 7. fol. 19.

The wordes of the Statute bee further, ſed hoc non intelligatur de ſocagio & paruis tenuris: Theſe wordes are to bee intended of common Socage, for if hee holde of the king in Socage in chiefe, and will intrude after office, nullum accreſcit ei liberum tenementum, no more then if the landes were holden by Knightes ſeruice in chiefe. And it is a generall ground, that in all caſes where hee that ſueth his generall Liuerie or Ouſter le maine miſſueth the ſame, and entreth thereby, this entrie is an Intruſion vpon the kinges poſſeſſion, and his wife of that poſſeſſion ſhall not bee endowed, as appeareth H. 21. Edward 3. fol. 1. 24. E. 3. 65.

¶ Le Roy auera leſchetes que aueigne quant temporalties deuefque ſont in ſes mains. Cap. xiiij.

ITem Rex habebit Eſchaetas de terris liberé tenẽtium Archiepiſcoporum & Epiſcoporum quando ipſi tenentes damnati ſunt pro felonia facta tempore vacationis, dum temporalia eorũdem fuerunt in manu domini Regis conferend' cui voluerit imperpetuum: Saluo ſeruitio quod ad dictos Prelatos inde pertinet & fieri conſueuit. Of this Statute I finde no booke caſe. Howbeit the letter of it is verie plaine and needes no maner of expoſition. For it goeth not to any other Eſchetes then ſuch as growe vpon offences, And if the crime or offence were done while the land was in the kinges handes, notwithſtanding the partie were not attainted thereof vntill ſuch time as the landes be out of the kinges handes, yet the king ſhall haue the Eſchete by force of this ſtatute. And here it appeareth how the king ſhall not hold the landes forfaited ſtill in hys handes, but muſt giue them ouer to holde of them that they were holden of before.

¶ Per graunt de Roy fees, aduowſons, & dowments des femes, ne paſſa, ſi ne ſont eſpecialment noſmes. Caps xv.

QVando dominus Rex dat vel cõcedit alicui manerium vel terram cũ ptineñ, niſi faciat in charta ſua vel ſcripto expreſſam mentionem de feod Miſ', aduocationibus eccleſiarum, & dotibus cũ accidunt ad prædictum manerium vel terram pertineñ, tunc his diebus Rex reſeruat ſibi eadem feoda, aduocationes cum dotibus, licet inter alias perſonas non fuerint obſeruata.

It is agréed in T.43.E.3.fol.22, that by the order of the common law before this statute, if the king had bine seised of a manor to the which aduowson had bine appendant, & had giuen it to me, notwithstãding that in the kings grant there had bine no mention made of the aduowson, nor of these words cum pertineñ, yet thaduowson had passed from his highnes by the said grant, for in those dates the king was but a common person, & a writ of Entre sur diss. & all other actiõs did lie against him as against any other cõmon person, & therefore in Assise 431. A.20.H.3. a writ of Entre was brought against one supposing that they had no entrie but by disseisin, which the king did to the demandant when he was within age, & also Wilby H.24.E.3.54. reporteth that he hath séene a writ which was Prĕcipe H. Regi Ang. in place wherof is now giuen Petition by his prerogatiue. And so it is said Li.H.22.E.3.3. that in the time of king H.3. and before, the king should be impleded as any other cõmon person, but king Ed. his sonne ordained, that none should sue him but be driuen to their petition. Howbeit (sauing reformation of these bookes) I think the law was neuer so, that a man should haue any such action agaynst the king: For Bracton which wrote in king H.3. time or nére thereupon, saith in his 3. book vnder the title Contra quem competit assisa, in this wise. Inter cętera vidēdū est quis sit ille qui deiecit, Princep. ex potētia, vel aliquis nomine suo, vel Iudex qui male iudicauerit, an priuata psona, si Princeps, vel Rex, vel alius q̄ superiorē non habuerit nisi deum, contra ipsū non habebitur remediū per Assisam, immò tantum erit locus supplicationi, vt factū suū corrigat & emendet, q̄ si non fecerit, sufficiat ei pro pena q̄ deum expectet vltorem, qui dicit, mihi vindictam, & ego retribuā, nisi sit qui dicat, qd' vniuersitas Regni & Barronagiū suū facere possit & debeat in curia ipsi' Regis, sed si ali' ex facto & disseisiñ principis statim vel ex post facto in seisiñ insteterit, quāuis talis incidat in assisā et in penam, vel tantū ad restitutionem, secundū qd' seisina ad

ipſum peruenerit ſtatim vel ex poſt facto, ſine principe tamen conuenire non poterit per Aſsiſã, quia licet quodãmodo diſſeiſinam fecerit, tamen non p ſe ſed cũ alio, s. cum principe, & ita qd ſine eo reſpondere nõ poteſt, & ita non ꝓcedit aſsiſa. Indirectẽ tamen & quaſi ex incidente & ſine breui comprehendi poterit perſona principis ad hoc quod factum ſuum emendet, vel in ꝑſonam ſuam redundabit iniuria manifeſtẽ: vtpote eſto quod impetretur aſsiſa tantum ſuper eũ ad quem res tranſlata eſt ſine principe, & qui tenetur ad reſtitutionem & ad penam, vel ad minus ad reſtitutionem, & ipſe reſpondeat quod ſine principe (qui fecit iniuriam) per ſe vel per ſuos reſpondere non debeat, quia ipſe princeps per ſe fecit iniuriam, vel ipſi duo inſimul, extunc erit factum & iniuria in manu domini Regis, qui dici debet in facto quaſi warrantus, et ꝙ tũc poterit (ſi warrãt' voluerit) factum ſuũ emendare quaſi á lege cõpulſus, & quaſi in perſona ſua cum ſit ei ſubmiſſus, debet firmiter obſeruare. So that by Bracton it appeareth, that no actiõ lieth againſt the king, but the partie greeued is driuen to ſue to the king by petition. But the reſon why that aduowſons ſhould paſſe in the kings caſe by the order of the common law, though it were not expreſſed in the grant, was this I ſuppoſe, becauſe that lands or tenements were not then compted as things that touched the royal eſtate, or that made the kings crown like as liberties or franchiſes did: For the one a common perſon might haue aſwell as the king, but the other none might haue but the king, or ſuch as were able to ſhew hys grant therof, & therfore ſaith Bracton in his 2. booke vnder the title Quę res dari poſsit, that for lands currit tempus contra Regẽ ſicut contra quamlibet priuatã perſonam. Which is as much to ſay, that if the king had right to any ſuch lands or tenements, & had ſurceaſed his time ſo long, that it exceeded the time of limitation in a writ of right, his highneſſe had loſt then his right for euer. And herewyth agreeth Britton fo. 29. But that is (ſaith Britton) of lands

parcel

parcel of the kings Escheates or purchased landes, and not of the auncient demesnes of his Crowne, for of those nullum occurrit ei tempus, if hée haue any ryght to demaund them. So that by Britton this reason will not serue for lands parcel of the Crowne, Ideo quære veram rationem. Howbeit since this statute was made, what landes soeuer they be, those thinges that are comprised in this statut passe not without making expresse mention thereof. Hitherto wée haue spoken of the reason why at the common law aduowsons should passe by graunt of the manor without béeing named: Now let vs sée how since the making of thys statute it shall likewise passe by graunt of the manor without béeing expressely named, and how not. P. 5. E. 3. fol. 66. And if the king render vp to him that was in ward at full age his lands, or to a Bishop his temporalties, although he make no mention of Knights fées or aduowsons, yet all passe therewith: For like as the kinges seisin in such case is by these wordes Omnia terras & tenementa, wythout speaking of fées or aduowsons, euen so being sued out of his handes by these wordes Omnia terras & tenementa, fées & aduowsons do passe without making any mention therof. And Liuerie 30. H. 16. E. 3. where after the death of an Abbot, the king rendred againe the landes to the heire, not making mention of fées or aduowsons, & yet he had them. And likewise H. 41. E. 3. fo. 5. H. 44. E. 3. fo. 25. the king granted the temporalties to one that was elect Bishop before he was consecrated, and adiudged the fées and aduowsons passed without making any mention thereof, and yet at the time of the grant he was not Bishop, for he lacked consecration. And the reason in all these cases is, for that the king was but seised in another bodyes right, and by his liuerie hée giueth nothing vnto them but only restoreth them to their right they had before. Like law should it appeare to bee by Finchden. H. 29. E. 3. 7. If aduowson of a Church be appendant to a Priory, which Priory is seised into the kings hands by reason that an alien is patron of it,

and afterward the king demiſeth the ſaid Priory cum pertinentijs, not making mention of the aduowſon vnto the ſaid Priorie, yelding a rent, to haue and to holde the ſame during the warre. And his reaſon is this, for that the right and freehold in this caſe remayneth ſtill in the Prior, notwithſtanding any ſuch ſeiſin, and the king is but to haue an annual profit thereof, & no right, but if any be to ſue dower or Liuerie with a partition out of the kings hands, they by that cannot haue the aduowſon, if mention be not thereof made, no more then they can that claime by graunt, and yet the king rendreth them the thing in reſpect of a right before, as he doth in the other caſes. But what then? they claime not the whole land that is in the kinges handes but onely parcel thereof, and then thaduowſon euermore abydeth with that that remaines, if expreſſe mention be not made thereof, and ſo not like the caſes before, where the king maketh liuerie of the whole. And this caſe appeareth alſo in the ſaid booke of P.5.E.3.fo.67. And note, that in all caſes where the king ſeiſeth a thing as his owne proper right, as he doth in the caſe of Wardes, Eſcheate, and ſuch like, there nothing paſſeth by grant of the appurtenance, if expreſſe mention bee not made of the thing yͤ is appurtenant by name. And therefore the caſe was H.29.E.3.fo.7. That where an aduowſon of a Church did belong to a Priorie, which Priorie was ſeiſed into the kinges handes ratione guerrę, and letten againe to ferme for a rent to the Prior, and afterward the king graunted away the patronage of the Priorie to a man and to his heires, and the cuſtodie (during the warre) of the Priorie with all that belongeth to the ſame of the rent reſerued, with all the profites of the Priorie that the king had ſeiſed, And yet though that the Aduowſon paſſed not, for that it was not named. But if there bee wordes in the kinges graunt that do amount to aſmuch as the expreſſe naming of the thing, or counteruaile as much, then that thynge paſſeth as farre forth as if it were expreſſely named. And there-

therefore, if a manor to the which aduowson is appendant be in the kings hands by eschete or purchase, & the king giueth the manor as fully & as wholy as such a one held the same before the eschete or purchase, in this case the aduowson passeth, & so it is agreed in 43. E. 3. f. 22. And learne for as much as this statute maketh mention but of iij. things, viz. knights fees, aduowsons of churches, and dowers, whether in such case any other thing then aduowson which is appendant or appurtenant should passe by words cum pertin̄ without naming of it. For it appeareth in 18. H. 6. 12. that where a Leet was within a towne and the king granted the towne cum pertin̄, not naming the Leete, & it was thought the Leet should passe thereby. But the reason was there because it was parcell of the towne, and that that is parcell or incident to an other thing, passeth by grant of the thing without making any mention thereof. And therfore if the king be seised of a coyodie by reason that he is a patrō of a priory, and granteth away the patronage without making any mention of the coyodie, yet the grantee shall haue the coyody: and so it is iudged 26. li. Ass. pl. 53. And yet the kings grantee of a ward shal not haue Gard per cause de garde if especiall mentiō be not made therof Gard 70. pl. 35. H. 6. And so it is if one be to haue restitution of the aduowson vna cum exit̄ and the church becommeth void, and the king makes him restitution with the meane issues and profits taken, yet he shal not haue this aduoidāce that is so fallen without especiall mention be made thereof in his restitution, as appeareth in pl. 18. E. 3. 21. and pl. 24. E. 3. 29. pl. 39. E. 3. 21. & pl. 46. E. 3. Grant 60. And yet if the king be seised of aduowson, & the church becommeth voide, and he granteth the aduowson away, his highnesse shal not now present nor take the benefite of the auoidance, as appeareth in T. 9. E. 3. 26. Therfore enquire what the reasō is of these diuersities, and what is meant by these words in the statute Dotibus cum acciderit ad pd̄ manerium vel terram pertin̄. For as I suppose these words serue to none

other

other purpose but where the king is to assigne dower, & he granteth ouer the mannor Durante minore ætate of the heire that is in ward to another, this patente shal not haue the assignement of dower if mention be not made thereof in his patent. Howbeit learne and enquire what is the true meaning of the said words.

¶ Le Roy auera chattels forfaits & an, iour, & wast. Cap.xvj.

ITem Rex habebit omnia catalla felonum damnatorum & fugitiuoꝝ, vbicunq; fuerint inuẽta, & si ipsi habeant liberum tenemẽtum, tũc illud statim capietur in manum dñi Regis, & Rex habebit omnes exitus eiusd̃ per vnum annum & vnum diem, & tenemẽtum illud vastabitur & destruetur de domibus, boscis & gardinis, & alijs quibuscunq; ad p̃d tenemẽtum spectãtibus, exceptis hominibus quorũdam priuilegiatorum inde per regem. Et postquam dominus rex habuerit annum, diem, & vastum, tunc reddatur tenementum illud capitali dño feodi illius nisi prius faciat finem pro anno, die, & vasto: de consuetud̃ tamen dicitur, qd̃ post annum, & diem, terrę & teneméta felonum in Gloc' reddentur & reuertẽtur ꝓximo heredi, cui debuerũt descendisse si felonia facta nõ fuisset. And in Kent in Gauelkind ỹ father to the bough, the sonne to the plough. Ibid̃ omnes heredes masculi participabunt hereditatem eoꝝ, & similiter feminæ: sed feminæ non participabũt cũ masculis. Et mulier habebit post mortẽ viri medietat̃ pro dote sua. Et si mulier fornicetur in viduitate, perdet dotem suam, vel si sit despõsata viro. Before this statute Glanuile did write in this wise in his vij. booke ca. 17. f. 59. vnder the title De vltimis heredibus. Notãdum qd̃ si quis de felonia conuictus fuerit, vel confessus in curia & de domino rege tenuerit in capite, tũc tam terra quam omnes res mobiles suę & catalla penes quemcunque inueniantur, ad opus dñi regis

gis

gis capiẽtur ſine omni recuperat̃ alicuius her̃ ſui, ſi aut̃ de alio quã de rege tenuer̃, is qui vtlagat⁹ eſt, vel de felonia cõuictus tunc quoq; oẽs res eius mobiles regis erũt. Terra aut̃ p vnũ annũ permanebit in manu dñi Regis. Elapſo aut̃ anno, terra ead̃ ad rectũ dñm ſcilicet ad ipſum de cuius feodo eſt, reuertetur, verũtamen cũ domor̃ ſubuerſione, & arbor̃ extirpatione. Et generaliṫ quotieſcũq; aliquis aliquid feceṙ vel dixerit in cur̃ propter qd̃ p iudiciũ cur̃ exheredat⁹ fuerit, hereditas eius ad dñm feodi de quo illa tenetur tãquã Eſcaeta ſolet reuerti. Foriſfactur̃ aut̃ filij & her̃ alicuius patr̃ non exheredat, neq; fratr̃, neq; aliũ quam ſeipſum. Preterea ſi de furto fuer̃ aliquis cõdẽnatus, res eius mobiles, & oĩa catalla ſua vicecom̃, puincię remanere ſolent: terr̃ aut̃, ſi q̃ fuerit, dñs feodi recuperabit ſtatim nõ expectato Anno. By this it ſhould appeare that in Glanuils time, for theft only the thriffe ſhould haue the goods that were forfait, and that as it ſhould ſéeme to his owne vſe, and not to the kings. For ho ſaith the lords in that caſe ſhould recouer their Eſchetes before the yeare, day, & the waſt. Howbeit this ſtatute made ſince that time giueth al felons goodes to the king without anie exception. And hereupon it is to be ſéene firſt what is comprized in this worde Catalla. Catalla is a generall word, which comprehendeth as well chattelles mouable, as not mouable. For leaſes for terme of yeares are within this word Catalla, as appeareth by Bracton in his 3. booke in the title of forfaiture of felons, ſaying: Quod terminus annorũ erit dñi regis, vt catalla, Quia accipit terminum ad ſimilitudinẽ catallorũ. And herewith agréeth the booke in H. 39. H. 6. 35. Alſo vnder this word Catalla is taken the iſſues and profits of lands and tenements of them that ſtie for felonie vntill ſuch time as they be attainted or acquited. And likewiſe of the lands and tenements of Clarks conuicted, vntil ſuch time as he hath his purgation. I mean lands and tenements as well of their wiues right, as of their own right, & ſo is the booke Forfaiture 16. and Coron

374.

374.H.4.Ed.2.and 3.Ed.3.Coron 356. Alſo vnder this word Catalla are taken the emblements that were growing vpon the ground at the time ỹ the forfeiture of the goods firſt began to take place,as appéereth Coron 344.3.E.3. Alſo vnder this word Catalla is compriſed a right of action to goods, as where goodes be taken away wrongfully from the felon H.6.H.7.f.9.or where one is indebted to the felon by obligation H.19.H.6.f.47.or is accountable to the felon for any receipts or otherwiſe, ẽ this appéereth H.28. E.3.f.92.and 50.Aſſ.2.and Trauerſe 33.A.32.li.Aſſ.Alſo vnder this word Catalla is taken ſomtimes goods wherin the felon hath no property,as if a man deliuer mony out of a bag,or corne out of a ſacke to one to kéepe,which is afterwards attainted of felony, that money or corne in this caſe is forfeited.Like law is it,if a theéfe that ſteales goods ſeuerally from ſundry perſons,and afterwards is attainted of one of the ſaid felonies, by this one attainder the goodes that are ſtollen from the other be alſo forfeited to the king. A.3.E.3.Coron 317.323.and 334.Like lawe is it if one ſteale goodes, and before he be attainted thereof he killeth himſelfe A.3.E.3.Coron 318.and 319.or dieth in priſon, or abiures the Realme, confeſſing an other felonie then that for the which he fled to the Church, in theſe caſes hée forfaiteth the goodes that he did ſteale Coron 379.380.H. 12.E.2.3.E.3.Coron 162.H.8.E.3.f.11.M.44.E.3.f. 44.26.li.Aſſ.P.32.So is it if the wife kil hir huſband,ſhe forfaites the goods of her huſband Corone 423.8.Ed.2. It Canc'. Then let vs ſée further what may be ſaid of this word Felonum. If the offence that is committed be felony,then it is properly within the compaſſe of this worde Felonum,and he that commits the offence ſhalbe ſaid Felon: Notwithſtanding that he therefore ſhall not ſuffer death: as in a caſe where one killeth an other ſe defendédo,Coron 116.T.16.E.3.or by miſaduenture Coró 302. 43.Ed.3. this offence is felony,and he that committeth it ſhall forfaite his goodes, notwithſtanding that he obtaine

pardon

pardon of life. For it was at the kings pleasure to grant pardon or not. But so shall not hee that killeth one that wolde robbe hym in his house, or the officer that killeth one that will not bee rested, nor he that killeth anie thing not yet borne, as a childe in his mothers belly, nor the person that is straught that killeth an other in his madnesse, 12. Edw. 3. Dower 183. and Forfeiture 53. For in all these cases it is not felonie. The wordes be further Damnatorum & fugitiuorum. Sometimes the king shal haue his chattelles, although he be not condempned of the felonie, As if a man be arrested for felonie, and afterwards breakes the arrest, and the other ere hée can take him againe, killes him, in this case he that is killed shall forfeite his goodes, and yet he was neuer attainted of the offence. Like Lawe is it if hée be killed in the first arrest, where he would not be arrested. And this appeareth in 3. E. 3. Coron 312. & 290. Howbeit, since that tyme there was a statute made Anno 34. E. 3. c. 12. Which séemes to alter the Lawe in these cases, if it be not that you will say peraduenture, that he shall forfeite them quia fugam fecit. Ideo quære. He that is felo de se shall forfeite his goods, and yet he was neuer attainted. Like lawe is before of the clerke conuict. And so is it of such as stand mute. P. 34. Ed. 3. Eschete. P. 10. or challenge aboue the number of two enquests. Then further this word fugitiuorum is taken for such as flie or withdrawe themselues for the felonie, that they be indicted, appealed, or accused of, for that makes a great presumption against them, as Bracton doth saie in his second booke vnder the title, Ad que restituatur vtlagatus, and for that presumption sake shall the vtlarie procéde whether he be guiltie of the felonie, or not. And also hée saieth in the saide Booke, quod vtlagati de felonia gerunt caput lupinum, & secum suum portant iudicium, ita quod sine iudiciali inquisitione pereunt, quia merito sine lege pereunt, qui secundum legem viuere recusauerunt, & hoc ita si in capiendo

fugiant

fugiant vel se defendant. Si autem viui capti fuerint vel se reddiderint, vita illorum & mors est in manu domini Regis, & qui taliter captum interfecerit, respondebit pro eo sicut pro alio, nisi sit in locis vbi consuetudo se habebit in contrarium, videlicet in comitatu Hereford, & Glouc'.

And in an other place he saieth, Quod nullum crimen maius inobedientia, quia pro contemptu & inobedientia poterit quis excõmunicari, sicut ꝓ quoliber peccato mortali, cum oĩbus subditi debeant esse Regi tanquam precellenti, maxime in honestis, & ducibus eius tanquam ab eo missis, & sic concordat lex diuina alĩ quantulum cum humana. And also saieth, quod vtlagatus de felonia forisfacit patriam & amicos, forisfacit quę pacis sunt, forisfacit quę legis sunt, forisfacit quę iuris sunt, & possessionis, & forisfacit actionem ante vtlagariam sibi datam.

Thus by the way, haue I noted vnto you such thinges out of Bracton, as me seemeth be notable, and make somewhat for this purpose: Although I needed not to haue gone so farre as to outlawrie for expolition of this worde fugitiuorum, but might haue rested at the flying. For if one flie for the death of a man, and this presented before the Coroner, he shall forfeite al his goodes that he had the day of that presentment, or at anie time since, vntill he be acquited of the said death. Forfeiture 35. Anno. 3. Edw. the 3. And notwithstanding that an enquest vpon his arraignement doth afterward acquite him, and also finde that he did not flie, yet his goodes remaine still forfeite, as it appeareth 22. libro Assi. ꝑ. 96. and Forfeiture 29. and 32. ꝑ. 5. Henrie the fourth Corone 296. 3. Edward the third. Like Lawe is it, where one arraigned of felonie before Justices, is founde not guiltie of the felonie. Notwheit it is founde, that he withdrewe himselfe for the said felonie, notwe shall he forfeite his goodes, but no profites of landes as he shall doe in the other case where it is

found

founde before the Coroner: For when the forfeiture shall haue no further relation, but to the day of the presentment, and not to the day of the flying, then when at the same day he is acquited of the felonie, then is the kinges title gone, as to the landes, and so consequently gone as vnto the issues. And this appeareth 3. Edward the third Corone 244. Also there is an other manner of flying, for the which a man shall forfeite his goodes, and that is where in appeale or endictment of felonie, the partie that is appealed or endicted will not appeare, but suffer the Exigent to bee awarded against him, hee thereby forfeiteth his goodes, and the profites of his landes, which hee had the day of the exigent awarded, or at anie time after.

And notwithstanding that he afterwardes happen to bee acquited of the said felonie, yet the forfaiture doth remaine. For when hee tarrieth the awarding of the Exigent, it appeareth of record, that he hath withdrawen himselfe, and this you shall finde in twentie two Assis. 81. and 41. Assise 3. Howbeit herein is there heede to be taken least there be errour in the awarding of the said Exigent. For if there be, he shall then forfeite nothing, as if the Exigent be awarded against the Accessorie before it be awarded against the principall, or before the principall bee attainted, or if an Exigent be awarded against one that hath a charter of pardon for the felonie (of elder date then is the awarding of the Exigent) and hath found suretie according vnto the Statute, and the same returned into the Chancerie before the Exigent awarded: For in these cases he shall avoide the forfeiture vpon the matter shewed P. 43. Edwarde the third 18. Contrarie Lawe it is, if after the Exigent awarded the appeale doe abate for insufficiencie, or for that that he that is outlawed, was imprisoned meine betweene the awarding of the Exigent and the outlawrie pronounced.

For in that case if he reuerse the outlary, yet his goods remaine

maine ſtill forfeit. Howbeit if he were impriſoned at the time of the Exigent awarded otherwiſe it is, and this appeareth Forfeiture 19.H.19. Ed.3. and 31.H.30.H.6. Alſo it is to bée noted, that one may flie for felonie, and yet hée ſhall forfeit nothing, as where one is arreſted for ſuſpition of felonie, and eſcapes, yet for this hée ſhall not forfeite his gwdes, if he were not taken with the manner, or at the ſuite of the partie, or endited of the ſame, as it appeareth 42. li. Aſſ. 5. Quære if he be endited afterward, whether he ſhall then forfeite them or not. Alſo an acceſſorie after the felonie committed, ſhall forfeite nothing vpon a fugam fecit. Otherwiſe it is of acceſſories before the felonie committed, as it appeareth H.4.H.7.18. But hée that withdraweth himſelfe but for Petit larcenie ſhall forfeit his gwds, as it appeareth 8.E.2. Corone 406. tamen quære.

And note for a generall rule, that the Townelhip where the gwdes of felones or fugitives be found, ſhall alwayes anſweare the king of them, and the Shiriffe of the iſſues and profits of the lands: and therefore the townelhip may ſeiſe them for the king. For it is no plée for them to ſaie, they were not delinered vnto them. And this appeareth in Fitzherbert, in the title of Corone. 390. 366. 300. 347. 290. 398. and 36.H.6. 25. 22. li. Aſſ. H.81. H.11. H.4. fo. 41. H.13. H.4. fo. 13. But at what time the goods of a felon or fugitive ſhall be ſeiſed, it is further to be ſéene, and how the attaindor ſhall haue relation. When it is founde by enqueſt before the Coroners quod fugam fecit, by and by the Shiriffe ſhall ſeize his lands into the kings handes by word onely, without taking any enqueſt for the ſame purpoſe, & alſo ſhall ſeiſe al his goods into the kings hands, and take an enqueſt as well of frée men as of villaines to appriſe them, and cauſe the price to be enrolled to the Coroners, and to deliuer them to the Townelhip to make anſweare thereof vnto the king. And this appeareth 22. li. Aſſ. H.96. And herewith agréeth the Statute of Coro-

ners

ners, and also Britton fol. 4. where you shall see this matter set forth more fully. And in H. 43. E. 3. 24. it is sayd that the kinges minister may seise the goodes of a Felon before attainder, & if the partie find suertie, then he to leaue them in the custodie of the partie, or els in the neighbors custodie. For the said minister ought not to carrie them away with him. And T. 7. H. 4. 47. Hull saieth, that if one be endicted of felony, yet till he be attainted his goodes shall not be remoued out of his house, but in the mean time shal be in his neighbors keeping, and he to be found of the same. And in the *Register* there is a writ, Quòd tenementa & bona taliter capta, videantur, imbreuientur, & saluó custodiantur per balliuum ipsius capti, qui securitatē Regi inuenient ei respondend', si &c. Saluis inde ipsi capto & familiæ suę necessarijs quámdiu fuerit in prisona. And so is *Britton fol.* 17. Howbeit now by the statute made in the the first yere of king R. 3. ca. 3. it is ordained, that none shal seise the goodes of any person arrested, or imprisoned, before that they be attainted, or that the goodes be otherwise forfaited, vpon paine to pay the double value thereof. Thys Statute extendeth not to any other, but to such as be in prison. For by the statute De proditionibus 25. E. 3. ca. 14. If one be endicted of felonie, which is not imprisoned, the Sherife at the second Cape shall seise his goodes, & yet they be not at that time forfaited. And also the Statute of R. 3. doth not extend to landes, but onely to goodes. Then for the relation, As for the goods it hath no relation but onely from the day that the forfeiture is presented, or verdict giuen, and therefore it is said in Forfaiture 30. H. 33. E. 3. that if he sell them before he be attainted, the sale is good, but for lands it hath relation to the day of the felony committed, be it that the attainder be by verdict or vtlarie, as it appeareth H. 38. E. 3. 31. & T. 30. H. 6. fo. 5. or be it that he bee attainted without proces of law, as in the cases aboue remembred, where he is killed in the flying, as appeareth Corone 289. a. 3. E. 3. And note, that if the attainder and

office found of his lands bee both within the yere of the felonie first committed, that it shall haue no relation for the yeres profits, otherwise it is if it bee after the yere, as appeareth in Coron 85.A.3.C.3. This booke must be vnderstand as I take it, where the attainder & the office bee before any day of payment within the yere. The wordes of this chapter be further. Et si ipsi habeant liberum tenētū, tunc illud statim capietur in manū dñi Regis, & Rex habebit oēs exit' eiusdē, p vnū annum & vnum diē, & tenētū vastabitur & destruet in doīb', boscis & gardinis, & alijs quibuscunq; ad prædict tenētum spectantibus. It should appeare by Glanuil in the beginning of this chapter, that the cōmon law was as much before the making hereof in all cases of felonie, sauing for theft, in which the king had no yere & day. Howbeit after Glanuils time, the statute of Magna charta was made, which saith in the 22.ca. therof, Nos non tenebim' tras illorū qui conuicti fuer' de felonia, nisi p vnū annū & vnū diem, & tunc reddant trę illę dñis feodorū. By this it should seeme this statute doth remit that waste, because it speaketh nothing of it, or els peraduenture you will say, that this word Nisi, argues & proues that the king before the statut of Magna charta might haue holden it as long as he would, but to the contrarie of that exposition is Glanuil as it appeareth before. Also Bracton which wrot somewhat after his time: For by Bracton in his second booke it appeareth, that before the making of the said statut of Magna charta, the king had nothing els but the waste, & to the intent he should remit the waste, the yere & day was afterward gyuen to the King: For these bee hys wordes in the title of Vtlarie. Si veró terram liberā habuerint vtlagati, statim capienda est in manum dñi Regis, & tenēda per vnum annū & vnū diē, ad capitales dominos post tminū illū reuersura, si de alio tenuerit quā de Rege: Si autē de Rege, tunc erit Eschaeta ipsius Regis, & hoc verum est, qd' per talē terminū remanebit in manu dñi Reg. nisi ipse capital' dñs, vel alius finē fecerit, p termino

mino regi habendo, sed quę sit causa quare tra remanebit in manu domini Regis, videt ꝙ talis est, quia reuera cū quis fuerit cōuict de aliqua felon̄ in potestate dn̄i regis erit prosternēdi ædificia, extirpādi gardin̄, & arandi prata, et quoniā hm̄odi vrgebāt in graue dān̄ dn̄orū ꝓ cōmuni vtilitate ꝓuisū fuit, ꝙ hm̄odi dura et grauia nō remanerēt, & ꝙ dn̄s rex ꝓpt̄ hoc haberet cōmodū toti⁹ tr̄æ illi⁹, ꝓ vnū annū et vnū diem, & sic oia cū integritate reuerterēt in manus capitaliū dn̄orū: Nunc autē petitur vtrū. s. Finis ꝓ termin̄, & similit ꝓ vasto. Et nō video rationē quare, nisi ꝙ tmin⁹ bené poterit esse ꝓ se sine vasto, eo qd̄ fugitiuus & vtlagat⁹ non solum delinquit erga eū qui sequit & appellat, sed erga Regē, cui⁹ pacē infringit cont̄ fidē suam cui tenet, ꝺa quilibet cū faciat sacrmētū iurat: salua fide dn̄i Regis. Thus our authors agræ not vpon this this yere & day, for Bracton is contrary to Glanuil that wrot before him. Howbeit Brittō which was likewise before the making of this statut of Prerog. agréeth wō Bracton, as it appeareth in the book fo. 14. adding further, ꝺ the king shal not haue the yere & day of land ꝺ is holden only for terme of life, or yeres, or by treth disseisin, or in fée terme or in mortgage. And so is Bracton also ther with agréeing in the 2. book, but now since this time this statut of Prerog. was made, which giues the king, as you may perceiue both the yere, day & waste. And first he saith, Quod Rex habebit oēs exit⁹ eiusd̄ per vnū annū & vnū diē. By this it should appeare, that the king should not haue the issues of the land but by a yere & a day, but yet it is clere, that he shal haue the issues also from the time of the felony don, vntil the time his highnes hath had ꝺ yere, day & waste, & not the Lord (allowing that that is to be allowed for finding of the prisoner) for it cannot be intended, ꝺ the lord should haue the mean profits, because ꝺ land shalbe deliuered vnto him wout profit, ꝺ is to say, wasted & distroied. And ther wō agréeth ꝺ book in Coron 290. A. 3. E. 3. & P. 49. E. 3. f. 11. And thereit appeareth, ꝺ if an office be found 20. yeres after ꝺ attainder, the king shal

haue the profits from the time of the felony committed vntill the yere and day next after the office found. For though the Lord be intitled to haue the eschete, yet the kings title for the yere, day & waſt goeth before the Lords: For the words bée, Poſtquam dominus Rex habuerit annum, diem, & vaſtum, tũc reddatur tenementũ illud capitali domino. Alſo by this word, Reddatur, it ſéemeth the Lord cannot enter into his eſchete after office found, but is driuen to ſue an Ouſter le maine for the ſame out of the kinges hands, as it appeareth in Trauerſe 48. A.8.E.2. but if a ſtraunger abate before office, the Lord ſhal haue a writ of Eſchete againſt him, & recouer, yet that notwithſtanding when an office ſhalbe found, afterward the king may ſeiſe for the yere, day & waſt, & ſhalbe anſwered of the meſne profits, like as it is when the kings tenant in chiefe dieth, his heire of full age, an ſtraunger abateth, the heire may haue Aſsiſe of Mortdaunceſter, if he will, & recouer againſt the abator, & yet vpon an office found, afterward the king ſhall ſeiſe for Primer ſeiſin, & be anſwered of all the meſne profits, and the heire driuen to ſue Liuerie. Further then let vs ſée in what caſes the king ſhall haue Annum, diem & vaſtum, and in what not. The king ſhall not haue Annum, diem & vaſtum of Clerkes conuict after verdict, becauſe hée forfaſtes no land, Coron 332. A.3.E.3. Like law is it of lands in Gauelkind, where the father is hanged, but otherwiſe it is, if he be outlawed or abiured for felonie, for there the king ſhall haue the yere, day and waſt, and this appeareth in Preſcription P.50. A.8.E.2. If the huſband bée attainted of felonie, the king ſhal haue the yere, day & waſt of the lands of the wife, & yet in that caſe the Lords ſhal not haue their Eſchetes. But what then? the huſband myght haue done waſt, & ỳ wife had had no remedy for the ſame, & by the ſame reaſon the king may do as much, & this appeareth in Coron P.327. A.3.E.3. & alſo in *Bracton* in his 2. book, & alſo it ſhould there appeare, that ỳ wife is driuẽ to ſue an Ouſt, le main after ỳ death of her huſbãd. If one be arreſted

ted for felony, & breaks the arreſt, ſo that in ỹ purſuit of him he is killed, becauſe he would not otherwiſe be taken, the king in this caſe ſhal haue the yere, day and waſt, as it appeareth Coron 312. & 290. A. 3. E. 3. If a man commyt felonie, & hath his charter of pardon, yet the king ſhall haue the yere, day & waſt, & the Lords their eſcheates, & this appeareth Coron 308. A. 3. E. 3. for the pardon doth not reſtore him but to the law. For though the king would pardon him with words of reſtitution, yet his grace could not therby reſtore him to the lands holden of other. And note, that the king ſhal haue the yere, day & waſt of lands in auncient demeſne, if it ſo be that the tenant might haue ſold the ſayd lands againſt the will of the Lord, as it appeareth Coron 310. A. 3. E. 3. & that notwithſtanding that the ſaid lands were alwayes vſed to be ſurrendred by the rod, & to paſſe by ſurrender. The wordes of the ſtatute be further: Exceptis hominibus quorundam priuilegiatorũ inde per Regem. That is as much to ſay, except ſuch as haue bona & catalla felonum by the kings graunt: for a man cannot preſcrib to haue bona & catalla felonum, as appeareth T. 46. E. 3 f. 16. P. 1. H. 7. f. 23. M. 8. H. 4. fo. 2. For none may haue this prerogatiue of yere, day, and waſt, but onelie the king, although he would claime it by charter from the king, or otherwiſe, as it appeareth Coron 310. A. 3. E. 3. But when the king is ſeiſed of it, he may commit it ouer, as appeareth by Bracton in his ſaid ſecond booke. But if the land wherof the king ſhould haue the yere, day and waſt, be vnder the yerely value of iij. s. iiij. d. it is vſed to be remitted for the ſmalnes and ſimplenes of the thing, as appeareth Coron 327. A. 3. E. 3. for it ſhould coſt more the ſuing of it out of the kings hands then the thing is worth. And note the cuſtome of Glouc' compriſed in this ſtatute, wherby it ſhould appeare, that notwithſtanding any ſuch cuſtome, yet the king ſhould haue Annum & diem. But not ſo of landes in Gauelkind, as I haue ſaid before.

Diuers other Prærogatiues there bee, which the King hath by the order of the common Law, that bee not within this Statute compriſed, a great part whereof vnder the title of Prærogatiue *Maſter Fitzherbert* hath moſt diligently noted in his great Abridgement, and ſo well placed there, that I do of purpoſe omit to reherce them here. The reſt would require ſo long a ſearch, that vnles I had gathered and noted them alreadie (as I haue not done in deede) I ſhould be faine to purſue the whole bodie of the common Lawes for the knowledge thereof, whereunto time ſerueth mee not, wherefore at this time mine intent is, not to meddle with them.

## ¶ Proces to be sued after the death of the Kinges tenant in chiefe. Cap. xvij.

By a Statute made in the 33. yere of the late king of most famous memorie H.8. the 22. cap. It is ordeyned and prouided among other thinges, that no person or persons hauing landes or tenements aboue the yerely value of fiue poundes shal haue or sue any liuerie before inquisition or office found before the Escheto: or other Commissioner or Commissioners, by virtue of the kinges writ or commission to be directed out of the kings Chancerie or other Courts, hauing authoritie to make such writs or commissions for sauing of liueries, which writs or Commissions shal not passe out of the Chancery, nor any other Courts, but by a warrant or bill to be assigned & subscribed with the hands & names of the Master of the kings wards and liueries, Surueior of his liueries, or the Atturney & receiuor of the Court of Wardes & Liueries, or three, two, or one of them, to be directed & deliuered to the Chauncelor of England, or to any other Chācelor or officer hauing power to award such writs. And if the lands or tenements wherof any inquisition is to be had by virtue of any such writ or cōmission exceede the yerely value of x. li. that then such as sue for such writs & cōmissions shal pay for the seale & writing therof such fee as hath bin accustomed. And if the said lands & tenemēts wherof any such inquisitions & offices are to be found by virtue of any such writ or commission exceede not the said yerely value of x. li. then such as shall sue for such writs or commissions shal pay for the seal of euery of them vj. s. d. & for the writing vj. s. d. & not aboue. This Statute doth

not set forth the name of the writ or commission that shal-
be sued, howbeit these words that follow, that is to say, (for
suing of liueries) do somewhat open the mindes of the ma-
kers of this statute, & declare that their meaning was of the
Diem clausit, & such other writs or commissions as serue
for the purpose, and not of euery writ or commission, for so
might an office be found by a wrong writ or commission,
which should want matter, or be otherwise insufficient to
make liueries. But learne & inquire, if after a good writ or
commission sued forth, the office that is found is not suffi-
cient, whether the partie shall haue his liuerie or not with-
out suing a Melius inquirendum, or a new office, because
that some peraduenture will say that the wordes of the sta-
tute be performed, that is to wit, an office or inquisition is
found. But to that it may be answered and said, that it is
no office when it is insufficient at least wise toward the
party that should sue liuery thereupon, although it be a good
office toward the king if any thing therein contained be for
his benefit. And learne also if the kings tenant dye seised of
landes in diuers counties, whether by force of this statute
he shall haue an inquisition or office to bee found in euerie
Countie where the lands lie, for so it is vsed to be done vpon
all general liueries, & he that sueth his general liuery other-
wise, misuseth the same, and is an intruder vpon the kinges
possession, howbeit peraduenture you will say, that if the
lands exceede the yerely value of xx. Markes, he must sue a
special liuery & not a general, & therefore it makes no mat-
ter for the inquisition or office, & ỳ the wordes of ỳ statut will
beare it wel ynough if there be but one office found. But as
to that it may be said, ỳ the meaning of the statute was not
so, for ỳ king can neuer be fully informed of his title, vnlesse
there be an office found in euery shire, & also by finding of se-
ueral offices, one record may be better for the king then an
other, wherof his grace may take aduãtage, for the best shal
be taken for ỳ king. Thus it appeareth by statute, how ỳ of

lands

lands aboue the yerely value of v. li. inquisition must bee made, & an office found after the death of the kings tenant before liuery can be had: & that must be by a writ of Diem clausit extremum for that is the proper writ that is to bee sued for that purpose, if any suit be made within the yere after the kings tenants death, or a special commission in the nature of the writ of Diem clausit. For vpon a general cõmission to inquire generally of al wards, no particuler person can haue liuery. And if he tarry till after the yere, then he cannot pursue any of these, but for his remedy must sue a writ called Mandamus, or a commission in nature of that writ, and thereupon to cause an office to be found, and so to haue liuery: But if an office bee once found by Diem clausit, and the heire dieth in the Kings ward, his heire must sue Deuenerunt, and no Mandamus, although it be after the yere of the death of him that died in ward, and so is the rule in the Register. Sometimes it happeneth that after deliuery of the writ of commission, and before office found, the eschetor dieth, or is remoued from his office, in which case then the proces that is awarded to his successor, is a writ called Datur nobis intelligi: but if office be found before his death or remouing, which office is not returned, then shall there be a Certiorare awarded to his executors to returne the same. For it is a matter of Record as soone as the Iurors haue put their seale vnto it, notwithstanding it be not returned. And note that the awarding of this writ of Diem clausit, or speciall commission is peremptory to him that sueth for it. For if hee lese it, or be taken from him with force, he gets no moe writs or commissions for the lands in the county, And this appeareth in the new Natura breuium fol. 253. c. Howbeit 14. E. 4. f. 5. it is touched by the way, that in such cases he should haue a new writ, Ideo quære. But after office once found by a Diem clausit, or special cõmission, as well the King and partie thereby are bound as euery other stranger for so much lands as are compriled within the

office,

office, and neither the king ne the partie, nor any other shal haue any mo writs or commissions to inquire any further of these lands, except it be in such cases as I shall hereafter recite, for so the law should neuer haue end, but new heires might be found euery day by office which were inconuenient, and the king should not know to whom to make liuery, and this appeareth 9.14.E.4.5. and 9.2. 9.7.f. 12. 9.4.9.4.fo.15. But where after office found it is surmised for the king, that his highnes hath a better title, then was found for him by the first office, whether the matter surmised may stand with the matter found by the first office or not, yea although it be more contrariant or repugnant, it is not materiall: but in such cases a new writ or commission shall be awarded. As take the case to be this: By the first office it is found the Kings tenants in chiefe dyed seised his heire within age, where in deede he died without heire, so that thereby the lands ought to haue escheted to the King. Or that he was tenant in taile, and died without issue of his bodie whereby the lands ought to haue reuerted vnto the king, in these cases the Court shall award a new writ or commission for the king. Like lawe is it where the daughter is found heire by office, and afterward the sonne is borne. Or where there is but one daughter found heire by office, where there ought to haue bin two found heires. Or if by the first office one is found heire of full age, which is not heire in deede, but an other is heire which is within age: In all these cases there shall be a new writ or commission awarded, causa qua supra, as it may appeare Liuery 28.T.12.R.2.9.14.E.4.f.5.& 9.4.9.7.f.6.& 30.li.ass.28. yea and a more stranger case, as it should appere in the new Natura breuium f.261.& 262. that is to say, where the king was to haue no benefit at all, more then he had by the first office, and yet a newe commission was awarded, and therefore the case was there: the second brother was found heire by the first office, and of full age, now the eldest had a commission being also of full age,

to

to find him heire, and thereupon had his liuery. So is it where two bee found daughters and heires to one man of certaine lands, where in deede parcell of the sayd land was giuen to one of the said two daughters in franke mariage, now she that claimed the frank mariage had a speciall cõmission to inquire of the same: and yet by that second office the king had no benefit, Ideo quere. For this Natura breuium seemeth to impugne the bookes before reherſed. And like as he may pray a new writ or commission in the cases above reherſed before liuery had, euen so may he do in the like cases after liuery had, if the liuerie be a generall liuery, and thereupon as soone as the title is found, the king shal releise, but not without a Scire facias, because the statute made at Lincolne hath so prouided, as I shall open more fully when I come to that place, and that in all these aforesaid cases a new Diem clausit may be as well awarded, as a new commission, as it appeareth An. 29. li. Ass. pl. 30.

¶ What thing shalbe in the king without office or seisure, and what not, and where by an office only without any seisure or other proces the king shall be in possession, and where not, & where he shalbe in possession without an office, but not before a seisure, & how the king may be intitled by any other record, as wel as by an office, and where a man may enter aswel vpon the kings possession, as any other. Cap. xviij.

By a statute made the 33. yere of the late king of famous memory H. 8. the 20. chapter, it is amõgst other things prouided, that if any person or persons shalbe attainted of high Treason by the course of the common lawes or Statutes of this Realme, that in euery such case, euery such attainder by the common law shalbe of good strength, value, force & effect, as if it had bin done by authoritie of Parliament

ment. And the Kings Maiestie, his heires and successors shal haue as much benefit and aduantage by such attainder, as well of vses, rights, entries, conditions, possessions, reuersions, remainders, and al other things, as if it had bin done and declared by authoritie of Parliament, and shall be deemed and adiudged in actuall and real possession of the lands, tenements, hereditaments, vses, goods, cattels, and all other thinges of the offenders so attainted, which his highnes ought lawfully to haue, and which they so being attainted ought or might lawfully loose and forfait, if the attainder had bin done by authoritie of Parliament without any office or inquisition to be found of the same, any Law, Statute, or vse of the Realme to the contrarie thereof in any wise notwithstanding. This Statute makes it clere & without question, that in cases of high Treason, the Landes of him that is attainted are in the King by and by without any office. But for other attainder it remaines as it was at the common law, & therefore learne if one which holdeth of the King be attainted of petit treason or felony, whether in this case by the attainder his lands be in the king without office, And mee seemeth by attainder & death together they should be in the king in law howbeit not in deede, vntill such time his highnes seise them by his officer, or that an office be thereof found: for by the attainder the lands are forfaited to the King by matter of Record, and then when the partie dieth, either the freehold must bee in suspēce, or els adiudged in the king in law, For he that was seised hath corrupted his blod, and is dead without heire, and therefore his highnes is become owner thereof in law, and a possession in law vested in him of the same landes, which his highnes at his will and pleasure may make a possession in deed, as sone as he will take vpon him knowledge of the sayd lands, and seyse them by his officer. And therefore the booke is agreed 9.20.E.4.f.11. that if he that is attainted be seised of aduowsons appendant, as sone as ȳ church becōmeth void, the king may present wout any office

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which proues that the king by that tainder was patron before any office found, or els how could his highnes present? and I see no difference between lands & aduowsons in this case, for aduowson is not so transitorie toward the king, but that he may take the presentment therof at all times when he will, quia nullum tempus ei occurrit. Howbeit learne what the law wil in this case, for many mē are of the contrary opinion. And see in the booke 9.4. Ed.4.22. concerning this matter: & so note what is said of a possessiō in law, for as I take it, there may be a possessiō in law in ỳ K. as wel as a possessiō indeed, which possession in law is euer without office or any other matter of record, as whē ỳ possessiō is cast vpō his highnes by a discent, reuerter, remainder, or eschete, or in title of his seigniory or prerogatiue, as for wardship, primer seisin or for ỳ custody of temporalties of a bishop during the time that ỳ sea is vacant: in al these cases without any office or other matter of record, there is a possessiō in law vested in ỳ kings highnes, viz. for that that doth discend, reuert, remaine, or eschet, ỳ free hold is cast vpon him in law, as it should be vpon a commō person in the like case, or els ỳ freehold should be in suspence, which may not be. T.9.H.7.2.& 9.H.49.E.3.f.16.& Estopple 255. H.4.E.2. & of the rest ỳ possession in law of a chatle is in his highnes in right of his seigniory, which his highnes at his wil & pleasure may make a possession in deede by entre or seisure H.21.H.7.f.7.H.20.E.4.f.11.& 14. and H.21. E.4.f.1.T.24.E.3.f.54.H.10.H.4.f.3. but not to make it a possession indeede by his grant, because there is a statut made in the 18. yere of H.6.ca.6. to the let therof, which prouides, ỳ all letters patēts made of lands & tenemēts before office found & returned, or within one month after, but only to him ỳ tendeth his trauerse shalbe void. This statut extends only to lands and tenements, therfore of ỳ body of his ward his highnes may make a grant notwithstanding this statut, as me seems for that is neither lād ne tenemēt: also notwithstāding that this statut doth restraine the grā-

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ting of the lands & tenements, yet the seisin therof remains & is in the K. as it was by order of the common law, which is as I said before, in his highnesse in law, although not in deed, till such time as he hath made a seisine or an entre by his escheto2, or a grant therof, which thepeth both to a seisure & a grant, in such cases where the grant may be good, & not restrained by a statute, til such time an office therof be found: For an office that entituleth the King to the possession, is sufficient by it selfe without any seisure or entre of the escheto2 to make a possession in deed in the K. if it be so that the possession were vacant when the office was found. But if the possession were not vacant, but another then he in whose right the K. seiseth, was tenant therof at the time of the finding of the office, the must the K. enter, or seise by his officer before the possession in deed shall be adiudged in him H.14.H.7.f.21.15.H.7.f.6.20.E.4.f.11.and 14. & H.21.E.4.f.1.pea and if his highnes seise not by the space of a pere & a day after the finding of an office, then may he not seise without a Scire facias to be pursued against him that is tenant therof. And of this matter you may se bukes 39.Ass.30.32.Ass.Trauers 32.50. Ass.2.and Gard 105. H.6.K.2. But hereupon is there a distinction to be made, whether that ỹ K. is intituled unto by office, be it a thing manuel, & wherof profit may be taken forthwith after the finding of the office or not. For if it be such a thing as is not manuel, & wherof there is no profit to be taken forthwith, until such time it falleth, in that case, although the K. be in possession of the right of the thing, yet is he not in possession of the profit therof, till such time as his highnes actually by his officer when it falleth taketh and perceiueth the said profit: as for example. The thing the king is intituled unto by office is no land, but aduowson, rent, or a common, although that the king by this office be patron of the aduowson, or owner of the rent or common, and thereby when the benefice becommeth voide, may present, or when the rent day commeth, may receiue the rent, or when the

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common is to be take, may vse the said common, yet if the office that intituleth his highnes be false, and he that was in possession at the time of ỳ office, taketh the profit when it falleth before the kings officer do take it, in this case this taking is no intrusion vpon ỳ kings possessions, for he was neuer seised indeed: wherefore being driuen to his action, if his highnes bring his Quare impedit, or action of trespas, the defendant may trauerse the office with him in the saide actions, keeping still his possession, & nede not to sue in the Chācery for the trauersing of the same. Thus may you see a differēce betweē a thing that is manuel, & a thing not manuel, & what the reason therof should be, learne, for as I suppose the reason of it is no other, but as I said before, that when a stranger is tenant at time of the office finding, the office maketh no possession indeed in the K. before an entrie or a seiser. And then when the kings officer taketh not the profits when it falleth, but suffreth him that was in possession to take it, then was the king neuer seised, but he still remaines in possession, that was possessed at the time of the finding of the office, till such time as seiser be made for the king, which cā not be done at al times, as it may be of lād, but only at such times as the profit therof to be taken, viz. when it falleth, and that is now past for this time, seeing it is alreadie taken, and therefore the king in that case is driuen to his action. But quære whether his Highnesse may be brought in possession in those cases by a claime, or not. And these cases may you see in the Bookes of H. 17. Ed.3.fol.10. P.21, Ed.4.fol.1.P.5. Ed.4.fo.3. H.4. E. 3.fo.1. and P.14. H.7.f.21. Like law is it, where an office is found, which doth not intitle the K. to the possession by entry, but onely by action, as where it is found that the kings tenant for terme of life, or yeers, hath done waste, P. 14. H.7.fol.23. and 25. or being his tenant in fee simple hath ceased by ỳ. peres P.15. H.7.f.6. or made a feffemēt by collusion contrary to the statute of Marlebridge C.12. H.7.f.1. and 19. and H.7.f.18. or such like. For it is a ge-

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nerall rule, that in al cases where a common person cannot enter, but is driuen to his actiõ, there the king can not haue the possessiõ, but by like action, or els by a Scire facias after office found in nature of the action, for the office in the case entitleth the king to no other thing, but onely to the action, as appeareth in H.21.H.7.fo.18. But quære of a feoffement that is found to be made by collusion contrarie to the statut A.34.and 35.H.8.c.5.for in that case it seemeth his highnes may enter without Scire facias, bicause ỹ said statute appoints no action to be sued in the case. And note, that in al these cases before, where the king is driuen to his Scire facias, or other action, if the office be false, the party may trauerse the office with the king, keping stil his possession, whether it be in the Chancery, or any other Court, & nede not to sue anie Ouster le maine, if it be found for him, because he was neuer out of possession. Then further let vs see in what cases the king cannot be entituled, but onely by office or other matter of record, and in what cases he may, howbeit not to haue any possession either in dede or in law, til ỹ time there be a seisure made. And as to that, note, that in al cases where a common person cannot haue a possession neither in dede nor in law without an entrie, there the king cannot haue it without an office, or such like matter of record, as where the king hath title to enter for a Mortmaine, or for a condition broken, in this case the king can haue no title, til such time as the said Mortmaine E.9.H.7.f.2. or condition broken P.2.H.7.f.8. be found by office, or by some other record, as appeareth P.15.H.7.6. So is it in diuers other cases cõcerning the kings prerogatiue, as in the case of Ideots, of lunatikes which haue lands or tenements, or when his highnes is to be entituled for annum, diem, & vastum of persons attainted P.49.E.3.11. or for an alienation wõut licence, or to seise ỹ tẽporalties of a B. for a cõtempt 21.E.3.3.29.30.& H.21.H.7.7. in al these cases his title must be first found by office, or otherwise appere of record, for these rights his highnes hath only as K.

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But if his highnes haue cause to seise the lands of his wydow, that hath maried her selfe without lycence, his highnesse may seise notwithstanding there be no office found of her mariage, as it appeareth in the New Natura breuium fo. 174. Learne what should be the reason thereof, more then in the case of alienation before. Like law hath bin vsed where his highnes is to seise lands of Priors aliens within this Realme ratione guerre, his highnes doth it without any office, for in both these cases the kings title is notorious ynough although it appeare not of record. But yet in those cases his highnes must seise ere he can haue any interest in the lands, because they be penall toward the partie, and of these cases you shall find bookes. H. 21. H. 7. fo. 7. H. 14. H. 4. fo. 36. H. 22. E. 4. fo. 44. Other Prerogatiues the king hath which extend onelie to personall and transitorie thinges, as bona & catalla felonum, wrecke de mere, treasure troue, or the profits of lands of Clerkes conuict of felonie, or of persons outlawed in a personal action, to these thinges it seemes the king is intitled although there be no office or other matter of record found of them, as it should appeare H. 11. H. 4. fo. 41. H. 21. H. 7. fo. 7. & 27. Li. Ass. pl. 50. And note that if the kinges title appeare any way of record, it is as good as if it were found by office. Therefore if the kings tenant alien without licence, which alienation appeareth by fine or other matter of record, in this case if there be another record found, that proueth the landes to be holden of the king in Capite, vpon these ij. records together proces shalbe made against the party by Scire fac. to come and shew why he should not make a fine for the alienation 50. li. Ass. 2. Like law it is where there is a record to proue that he that alieneth is but tenant in taile of the kings gift, & he pretending to be tenant in fee simple doth purchase a licence of alienation & alieneth, and after dieth without issue, which death is found by office, but nothing of this state taile or licence appeareth in the said office, yet vpon al these records laied together the king shall haue a Scire fac.

againste the alienée, to shew why the lande should not bée seised into his handes, and his highnesse aunswered of the profites since the death of the tenant in taile, for when he was but tenant in taile it appeareth that the lycence was purchased vpon a false suggestion, and so voyde, and then the landes ought to reuert to the king, because his reuersion could not be discontinued. And this may you sée 40. Li. Ass. 30. Then last of all it is to bée séene whether the possession may be taken from the kynge by entrie or not. And as to that, if the kings possessiō be by matter of record, no person can disseise him or take the possession from hym, for like as the king cannot take by gyft from any person but by matter of recorde, no more may the possession departe from him but by matter of recorde, and therefore his hyghnes cannot haue assise or Iectione firme siue custodie, like as a cōmon person may: but his highnes may haue a writte of rauishment of Gard, vt patet Gard 3. M. 47. E. 3. yea and though the entrie be not immediatly vpon hym but vpon his committée or farmer, yet it is no disseisin to hys highnes, as it appeareth an. 4. H. 7. 1. M. 2. H. 4. 7. M. 14. E. 4. fo. 2. & Suggestion 9. M. 35. H. 6. By the which said booke of 35. it also appeareth that if the king or his cōmittée be cast out of the wardship of the landes, that the remedy is in this maner that is to say, vpon a suggestion therof made in the chauncery, there shal be awarded a writte called Amoueas manum, and that vppon a certeine paine, which writte may be awarded only vpon his suggestion without any presentment or inquiry, and this writ may be graunted to the cōmittée as wel before possession had of the ward as after, for when the king was once possessed by office, and graunted it ouer, yet this possession still remaines, for the king abideth still gardein notwithstanding any such graūt: And therefore this writte of Amoueas sub pena lyeth for the graunté or committee, although the grant be absque aliquo inde reddendo. And if vpon this writ of Amoueas

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the defendant doe not restore the thing, then shall goe out against hym an attachement, vppon which writte the defendant may appeare and shewe his title, which if it bee found against hym, hee shall then make restitution by iudgement and pay a fine, and aunswere the meine issues and profites. Thus doth it appeare that the king cannot bee disseised or ousted if his highnesse bee once seised by matter of recorde. Otherwise it is before his seisin bee by matter of record, for if before office a straunger enter by title or without title, this is no intrusion vppon the Kinges possession, but in this case the heire may haue Assise de Mortdauncester against the straunger if he will, which proues that by his entrie hee hath gotten he both a freeholde and a fee simple. But as sone as the office is founde, and the Escheator entreth, this possession of the straunger which entred without title is clerely vndone, and the freeholde and the fee simple reuested in the heire. But if the entrie of the straunger were by title, and afterward office is found, and the kinge seiseth, whether then it bee so or no learne. And it should seeme to bee all one, or els the Kinges seisure is not good, for how can the kinge seise in an other bodyes vyght, if the vyght were taken away before by an entrie: therefore it should seeme eyther his highnesse hath no title in that case to seise, or els by his seisure the freeholde and the fee simple must reuest in the heire. But note, that if the king will by colour of a Record seise an other mans landes, which Recorde gyues hym no title in deede, notwythstanding any such seisure, yet hee that hath vyght may enter vpon the kinge, and by his entrie reuestes againe in him selfe both the freehold and fee simple. As where it is found the Kinges tenant dyed seysed but of an estate for terme of lyfe, the reuersion to an other, and this notwithstandinge the kinge seyseth, in this case if hee in the reuersion enter vppon the king, this is a good entrie:

And therefore the case was, he made a feoffement after his entrie, and it was thought to be a good feoffement. Like law is it where the king is intitled but onelie to the profits as vpon an Vtlagarie in a personall action, or vpon the conuiction of a Clerke, In these cases if the partie enter and make a feoffement, or if a straunger that hath title to enter do enter, he dischargeth the king of his interest. And of these matters you shall finde bokes. 9.8.H.4.fo.16. H.21.E.3.fol.1. H.3.H.7.fol.2. H.10.E.3.fol.2.27. Ass.P.50. T.9.H.6.fol.2. and H.21.H.7.fol.7.

## Enterpleder. Cap.xix.

SOmetime it happeneth that by two seuerall Offices found in one Countie, seuerall persons be severally found heires to one man, whereby for asmuch as the king is brought in doubt to which of them his highnesse may make liuerie, they therefore must first Enterplede, and when by enterpleder the priuitie of the bloud is tried betweene them, then his highnesse ought to make the liuerie to him that is tried to be the next heire of him that dyed. As for example, by one Diem clausit, or speciall commission in one Countie, one is found heire to him that died the kinges tenant and of full age, and by an other Diem clausit or speciall commission in the same Countie one other is found heire also to him that died and within age, in this case the heire that was first found shall haue a Scire facias in the Chancerie against him or her that was last founde heyre to come and shewe why liuerie should not be made vnto him of the lande comprysed

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in the Scire facias as heire to him that last died seised ther-of, vpon which writ if a Scire feci bee returned, and the partie defendant commeth not, or if he come and confesse that he himselfe is not heire, then the plaintife in the Scire facias shall haue his liuerie, but if he come and entitle him by the second office, and trauerse the first as he needes must, (for the enterpleder must needes rest vpon the first office, and not vpon the second) then as the issue is found, so shall he or they for whom it is found haue liuerie. And this appeareth in the New Natura bre. fo. 262. and P. 16. E. 4. fol. 4. Trauerse 44. P. 36. E. 3. Howbeit a great doubt ryseth in our bookes vpon this matter, whether the enterpleder shalbee forthwith after the second office found, or not, vntill such time as the heire that is found within age commeth to his age, and as it appeareth by the said booke of 36. E. 3. in this case, where one was first found of full age, and after the other within age, thenterpleder was forthwith, for it were no reason that he that was ryght heire and of full age should be delayed by the nonage of the other that is no heire. And a straunger shalbe receiued to trauerse the office, notwithstanding the heire that is found by the office that is trauersed be within age. And then it is no reason that the heire in this case be in worse condition then a straunger. But take it, by the first office one is found heire and wythin age, and by the second office an other is found heire, and of full age, whether in this case they shall enterplede or not, or whether the enterpleder shalbe before thage of the other. And surely it should seeme by the groundes and rules declared before vpon the writ of Diem clausit extremum, that the second office in thys last case is voide, because there is no better title found for the king than was by the first, and then if it bee voyd, there can bee no enterpleder. Howbeit in the New Natura breuium folio 262, it appeareth to the contrarie

hereof, and that they shall enterplede in this case, and that the second office is not void, for there the heires found by both offices were of full age. And yet that notwithstanding they enterpleded. And so is .T.5.E.4.fo.4. where it is said that if by one office the heire is found within age, and by an other office an other is found heire of ful age, that in this case they shall enterpled, but not before the childe come to his full age. And Townsend Iustice saith in .P.1.H.7.fo. 14. That if by diuers offices ij. be seuerally found heires and within age, now the kinge shall kéepe the landes till their full ages, and then they shall enterpled, and if they die before enterpleder their heires within age, seueral Denenerunt shalbe awarded, that is to say: for euery heire one, and by the same being found seuerally heires to their auncestors, they shall enterpled at their full ages like as their auncestors should haue done if they had lyued, and if the dying of any of them were without issue, and the other found to be his heire, then is the enterpleder determined. Thus may ye sée how bokes varie in this matter, and yet by the way note this difference, that is to say, where by the first office the heire is found within age, and where of full age, for by these bokes it should séeme that if hée bée first found within age, notwithstanding that by an other office another is found heire and of full age, yet he shall not enterplede wyth the other till hée be of age: contrarie it is if the first bée found of full age, and the next within age, and the reason may bee for that the king is first seised of him that is within age, with whom the law weyes more in presumption to be heire then with the other, and this title is the best title the king hath, for it entitleth his highnesse to a greater benefite then doth the second office, and this second office was found vpon a Commission graunted more for the kinges benefite then for the heires that should bee found by the same, and therefore it were

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reason that he that is first found heire, haue more lande if any lande bee to bee shewed, then he that was last found heire, or at the least for the kinges benefite that the matter bee respited till the childe be of age. Also the said Iustice Townsend said further Pl. 1. H.7. fol. 14. that if one bee found heire in one countie, and an other found heire in an other countie, yet they shall enterpled, which cannot be as mee seemeth H. 2. H.7. fo. 12. for once we haue a generall ground, that a man cannot sue a general liuerie by parcels, but first he must cause an office to be found in euery shire where he hath lands, and when all the offices be returned, then to haue his liuerie & not before, then in this case where one is found heire in one shire, & an other in an other shire, here none of them both can haue liuerie, because he hath no office found but in one shire and not in the other: and then if there can be no liuerie there can be no enterpleder, wherefore it should seeme in that case they cannot enterpled. And herewith agreeth the booke in Pl. 8. H.7. fo. 11. So no enterpleder can be but where there is an office thorough the whole found for euery heire in euery county where the lãds lie. Pl. 16. E. 4. f. 4. but it is not alway requisite that there be seuerall offices found, for sometimes vpon one office foũd by it selfe alone there may be an enterpleder, & that is wher two be found heires by one enquest, as two twinnes, that is to say, tȳ. children borne at a burden, T. 1. H.7. 28. And it is to be noted, that euery enterpleder is to trie the priuity of bloud onely, that is to say, which of these that enterpled is next heire to him that last died seised, and not to trie their rightes in the landes. And therfore if by one office one be found heire of a general tayle, & by an other office an other is found heire to the same land as of estate in special tayle, they shal not enterpled, as it appeareth H. 21. H.7. fo. 36. Also they must be both found heires to him that last died, & by whose death ỳ king did seise: For if one be found heire to

him that died seised, and another is found heire to the ancestor that died seised next before the last dying seised, in this case they shall not enterpled, as appeareth in H.2.H.6.fo.5. Also they shall not enterpled but where both heires claime by one selfe title of landes holden of the king, for if the kinges tenant dye seised of landes holden of other as well as of the king, and one is found heire to all the lands, & by an other office an other is found heire only to the lands holden of other, in this case they shall not enterpled, as it appeareth in H.12.E.4.fo.18. for he that is found heire by the second office cannot haue liuerie if the enterpleder were found for him, because he is not found heire of all, as is before remembred. And therefore H.21.H.7.fo.35. if one be found heire virtute breuis, and another is found heire virtute officij, in this case they shall not enterplede, because he that is found heire virtute officij cannot haue liuerie if the enterpleder did passe with him, for the nature of enterpleder is to haue liuerie for him with whom it is found. And note that notwithstanding an enterpleder is not to trie the right in the land but onely the priuitie of blood: yet the issue tried betweene them shalbe an estoppel afterward in an action bred of the possession of the same auncestor by whom they claime, as in Assise de Mortdancestor of Cosinage, as it appeareth in Estoppel 255. H.4. E.2. And note, that as two or more shall enterpled that claime as heires, euen so shal any other that claime not as heires but by some other title, if it be so that their title affirme the kinges possession: As take the case to be thus. Landes holden in chiefe is alyened to diuers persons at diuers times, and this found by office the king seyseth and after commeth euery of the alienées and prayeth to make his fine & to be restored, now they shall first enterpled and trie which of their feffements ought to take place, ere any of them getteth restitution, as appeareth in 43.Ass.pl.p.20

ſo it is if any of them come into the Chācery without proces & conſelle thalienation, as it appeareth by the ſaid booke for by the confeſſion the king is intitled againſt him that confeſſeth as well as if it had bin found by office.

# Trauerſe. Cap.xx.

TRauerſe for goods was at the common lawe, but trauers for lands found by inquiſition before theſchetors is giuen by the ſtatute made in the 34. yere of E. 3. cap. 14. which ſaith in this wiſe. Item action eſt que la ou terres ou tenemēts ſont ſeiſies en la maine le roy per office del eſchetor conteygnont que le tenant le roy ent fiſt alienation ſans conge le roy, ou que le tenant le roy per ſeruice de chiualer moruſt ſeiſi de les terres & tenementes auantdits en ſon demeſne come de fee & ſon heire deins age, & puis la cauſe certifie en la Chancery & celuy que terres ſont ſeiſi veigne en la Chancerie & voet trauerſer loffice que fuit primes priſe per mandement le roy, que les dits terres ne ſoient my ſeiſables, ſoit a ceo reſceu, & ſoit le proces mande en bank le roy a trier & ouſter fair droit. This ſtatute extendes only to the offices taken virtute breuis aut cōmiſsionis, & not to the offices taken virtute officij. And alſo by this ſtatute though the trauerſe were found for the partie, yet might he not haue had iudgement till a procedendo ad iudiciū had bin awarded. And therefore was there another ſtatute made in the 36. yere of the ſaid king the 13. Chap. the tenor wherof is this, Pur les greuouſes cōplaints q̄ux le roy auer oye de ſō people de ſes eſchetors, & de lour male port, il voit & ordeign del aſſent auantdit, q̄ terres ſeiſies en ſa maine, per cauſe de gard, ſoiēt ſaluemt gards ſās waſt ou diſtruction. Et que leſchetor neyt nul fee de boys, veneſon ne peſſoun, nauter riens, mes reſpoigne au roy des iſſues & profits annuels proueignants des dits terres ſans waſt, ou diſtruction

tion faire. Et ſil face autrement & de ceo ſoit attaint, ſoit reint a la volunte le Roy, & rend al heires ſes damages au treble, a ſa proper ſuit, cy bien deins age come de pleine age, & eyent ſes amies tanque il ſoit deins age la ſuit pur luy, reſpoignāt al dit heire de ceo q̄ ſerra iſsint recouere. Auxint dauters terres ſeiſies in le maine le roy per enqueſt doffice priſe deuant leſchetor teigne m̄ ceſt ordinance & penaunce deuers leſchetours. Et ſil eit null home qui mette challenge ou claime as terres iſsint ſeiſies, q̄ leſchetor mande lenqueſt en la chācellary deins le moys apres les terres iſsint ſeiſies. Et que briefe luy ſoit liuere de certifier la cauſe de ſa ſeiſin en la chācellarie, & illonques ſoit oye ſans delaye de trauerſer loffice ou autrement monſtrer ſon droit & illōques mand deuant le roy affaire fynall diſcuſsion ſans attender auter mandemēt. Et en cas q̄ aſcun veigne deuant le chancellor & monſtre ſon droit p quel demonſtraunce p bones euidences de ſon ancien droit & bone title q̄ le chācellor p ſa bone diſcretiō & aduiſe du counſaile (ſil ſemble q̄ il beſoigne auoir counſaile) q̄ il leſſe & bayle les terres iſsint en debate al tenant rend' ent au roy le value ſi au roy appertiēt, en maner come il & les auters chācellers, deuāt luy ont factes auāt ces heurs de lours bones diſcretiōs, iſsint q̄ il face ſuertie q̄ il ne ferā waſt ne deſtruction, tanq̄ il ſoit aiudge. Et q̄ les dits eſchetors preignēt tiels enqueſtes en les bones villes & p bones gents & de ceo ouertmēt, & p endents, affaires enter les dits eſchet & ceux des enqueſtes come auter foits eſtoit ordeigne p eſtatutes. A.24.E.3. Et ſi vll eſchetour face au contrary de ceſt ordinance ſuiſdit eit la priſon des 2. ans, & ouſter ceo ſoit reint a le volunte le roy. By the common law, before the making of theſe ſtatutes, a mā had no other remedy to auoide a falſe office but only his petition. Howbeit in L.24.E.3.fo.54. Wilby ſaith, that if the office had beene found before commiſſioners or any other than the eſchetor, the party would haue his trauerſe by thorder of the commā law.

law. Peraduenture he may be moued ſo to ſay, becauſe thoſe ſtatutes giue a trauerſe only to offices found before theſchetors, making no mention of any offices found before any commiſſioners. Alſo before theſe ſtatutes if after liuerie or Ouſter le maine ſued, there had beene a newe office founde whereby the King had beene entitled to releiſe, and therupon a Scire fac. according to the ſtatute of Lincolne againſt the partie that had purſued ỳ liuerie or Ouſter le maine, to come & ſhew why the land ſhould not be releiſed, the partie in the Scire fac. might haue trauerſed the office that was ſo newly found, as I ſhall more plainly declare when I come to ỳ place C. 26. l. 80. Alſo Bab. ſaid in the Eſchequer chãber before al the Iuſtices, Trauerſe. 47. An. 8. H. 5. ỳ theſe ſtatutes that giue trauerſe are only to be vnderſtand where the king is intitled to the land but for a time, as for wardſhip, alienation without licence, & ſuch like. But if his highnes be intitled to the fée ſimple or ỳ freehold, there he that is put out by the office ſhal not haue his trauerſe, but is put to petitiõ. Tamen quære. For though the firſt ſtatute be thus as Bab. hath ſaid, yet the ſecond is not, but general, & therefore may be extended to al offices what matter ſoeuer they cõtaine, as appeareth Trauerſe 37. H. 19. R. 2. where it is found that one had encroched vpon the kings demeanes, which office indéed was falſe, for that the thing ſuppoſed to be encroched was parcel of his manor ỳ was ſo preſented, & no part of the kings demeans: in this caſe the party being put out of the parcel of groũd by theſchetor was receiued to trauerſe thoffice, and yet thoffice entitled the king to the fée ſimple. Alſo thoſe ſtatutes ſéeme not to giue trauerſe, but to him that is put out of poſſeſſion by thoffice. But the ſtatut of 8. H. 6. c. 16. alloweth any trauerſe profered by him that ſéeleth himſelfe grieued by any ſuch enqueſt, although he be not put out of poſſeſſion by theſchetor. And the ſtatute ſeemes alſo to allow trauerſe of any office taken aſwell before commiſſioners, as before the eſchetor. Howbeit ỳ ſtatute giueth no trauerſe, but only maketh therevnto a rehearſal.

Theſe

Theſe ſtatutes that giue the trauerſe ſéeme to offer it generally to any man that wil deſire it or that doth put challẽge or claime to the lands whereof he is put out by any office. Howbeit the expoſition hath bene otherwiſe, that is to ſay, that his challenge or claime muſt be ſuch as the law wil admit and allow, for euery man cannot trauerſe that would, or that maketh his challenge or claime: for theſe ſtatutes are intended where the king is intitled by office only, for if his highnes be intitled by another record beſide the office, & intitled as it were by a double matter of record, the partie ſhall neuer haue his trauerſe. As take the caſe to bée this, a man is attainted of treaſon by act of Parliamẽt or otherwiſe by verdict, and after it is found by office that the ſayd perſon attainted was ſeiſed day of the treaſon committed of certaine lands, which in déede were neuer his lands, but mine, in this caſe if I be put out of my land by this office, I cannot trauerſe it: cauſa qua ſupra, and yet I am a ſtranger to this record, as appeareth in 40. Aſſ. 24. P. 49. E. 3. 11. P. 10. H. 6. 15. P. 4. E. 4. 2. and M. 14. E. 4. fol. 7. But if there be no ſuch record of attainder I ſhalbe receiued well ynough to trauerſe the office alledging firſt to enure me to a trauerſe, that there is no ſuch record of attainder, as appeareth in P. 4. H. 7. fol. 7. Alſo hee that is found heire by office ſhall not trauerſe the ſame office that ſo findeth him heire (if that part of the office that concernes the tenure in chiefe be true) although the reſt of the office be falſe: and therefore if the Kings tenant dye ſeyſed his heire being of full age, and by a falſe office the heire is found within age, in this caſe he cannot trauerſe this office, as it appeareth M. 5. E. 4. 3. And the reaſon of it is becauſe the heire cannot falſifie the office that he himſelfe is to affirme by his liuerie when he ſhall ſue it. For though he would cauſe another office to be found, according to the truth of the matter, yet it were not to the purpoſe to helpe him, for the beſt office ſhalbe taken euermore for the King. That is to ſay that, that giues his highneſſe

moſt

moſt aduantage, and the heire driuen to ſue his liuery vpon the office onely, for ſeeing the king is bound by an office as well as is the heire, it is reaſon if any be better for him thē other, that he be bound to that onely, and not to the other, and the law preſumes the one office to be as true as the other, vntill ſuch time a triall thereof be made, which triall cannot be by the heire, for he is bound, as I ſaide before, by the office that is found without any further choiſe, hauing no prerogatiue in ſuch matters, and if he ſhould be receiued to his trauerſe in this caſe, then vpon the trauerſe found for him hée ſhould haue the landes out of the Kings handes by an Ouſter le maine without any liuery ſuing, as landes that ỹ king ought not to haue ſeiſed, which were inconuenient. For euery way the K. ought to haue ſeiſed thoſe lāds againſt anie that claymeth to be heire vntill ſuch time as liuerie be ſued thereof. Like Lawe is it where the kings tenant dieth ſeized of land in diuers Counties his heire being of full age, and in one Countie, the ſame heire is found within age, and in an other Countie he is founden of full age, in this caſe the heire ſhall not trauerſe the office that found him within age Cauſa qua ſupra: for then for the landes in one Countie hée ſhoulde haue them out of the kings handes without anie office or liuerie ſuing. And this caſe appeareth in Trauerſe 39. H. 32. H. 6. But if an office find that my father held his landes of the king in chiefe by knights ſeruice, where in déede he helde not of him in chiefe, in this caſe I ſhal be receiued to trauerſe this office. For if I ſhould ſue my liuerie vpon the ſame, I ſhoulde bée cōcluded euermore after to ſay, but that the lāds were holden in chief of the K. & for that cauſe I ſhalbe receiued to my trauers as euery ſtrāger ſhal be in ỹ like caſe: for if my trauers be true, then can ỹ K. haue no cauſe to ſeiſe thoſe lāds, & therfore not like ỹ caſes before remembred, as appereth 9. 1. H. 7. f. 3. & 28. The wordes of ỹ ſtatuts be, that he whoſe lāds be ſeiſed ſhall trauers, or he ỹ puts chalenge or claime to the land ſo ſeiſed. Theſe wordes be not ſo generally vnder-

vnderſtand as they be ſpoken, for moſt men doe vnderſtand them, that he that wil challenge or claime but a term of yeares onelie, ſhall not be receiued vnto his trauerſe where the king is entituled to the frée holde by the office, As where it is found that the kings tenant is ſeiſed of certaine landes, and is dead without heire, whereby the lands ought to eſchete to the king, commeth one and ſaieth, that he is tenant for terme of yeares of theſe landes of the demiſe of a ſtranger, without that that he that is ſuppoſed to be the kings tenant, was euer ſeiſed of theſe lands: this trauerſe lieth not in his mouth: for he that hath but a chattell, ſhall not be receiued in anie caſe to falſifie the recorde that geueth anie man intereſt in the frée holde, although hée bée a ſtranger vnto that recorde. Contrarie Law is it of him that hath a frée holde or inheritance in the land, for they ſhall trauerſe the recorde in ſuch caſe. Like Lawe is it where the king is entiteled but vnto the Wardſhippe of the heire of his tenant, he that is farmer of the demiſe of a ſtraunger ſhall not trauerſe his office, although the king bée not entituled thereby vnto anie frée holde, for it was not the minde of the makers of theſe Statutes to helpe them that claime but chatteles, which are accounted in Lawe as nothing, becauſe they periſh and abide not. Et de minimis non curat lex. Howbeit learne what the Lawe will in theſe caſes, for I haue ſéene no Bookes of them. The lord in title of wardſhip ſhall trauerſe the office, and yet he claimeth but a terme of yeares in the land, As where it is found by office, that ſuch a one held landes of the king in chiefe, and died his heire wythin age, where indéede he holdeth no ſuch land of the king, but onelie of mée by knightes ſeruice: In this caſe, I that am lord ſhall trauerſe this office, that is to ſaie, ſhewe how they be holden of me by knightes ſeruice, wythout that they be holden of the king, as appeareth in M.1.H.7.3. For there it toucheth the Lords inheritance in the right of his

his ſeigniorie, and becauſe he by the falſe office is to loſe the profite that is preſently fallen by reaſon of his ſeigniorie, it is reaſon hée bée receiued to trauerſe the office. But if he were but Lorde in ſocage hée ſhoulde not bée receiued to his trauerſe, becauſe he thereby can make no title vnto the Wardeſhippe of the bodie and landes of the childe, for it is a good generall ground if the King be once ſeiſed, his Highneſſe ſhall retaine againſt all other that haue no title, notwythſtanding it be found alſo, that the King had no title, but that the other had poſſeſſion before him, as appeareth in 37. li. Aſſ. Pl. 11. where it was found, that neither the King nor the partie had title, and yet adiudged that the King ſhoulde retaine, for the office that findes the King to haue a right or title to entre, makes euer the king a good title, although it be falſe, and his Highneſſe thereby may take poſſeſſion againſt anie other that is ſeiſed of the landes, and retaine vntill ſuch time as the office be trauerſed by him that hath title and tried to be a falſe office. And therefore no man ſhall trauerſe the office vnleſſe hée make himſelfe a title. And if he cannot proue his title to be true, although he be able to proue his trauerſe to be true, yet this trauerſe will not ſerue him. As for an example, it is found the Kings tenant died ſeiſed of certaine landes that hée helde of the King in chiefe, his heire being within age, where in déede hée had made a feoffement in his life time vnto an other of thoſe landes, it is no trauerſe for the feoffée to ſaie hée died not ſeiſed, but he muſt firſt make himſelfe a title by the feoffement: and foraſmuch as it is found that the lands are holden in chiefe, if hée will make his title good againſt the King, he muſt ſhew forth a licence of alienation, or a diſpenſation thereof, or elſe hée muſt trauerſe the tenure in chiefe, as well as he ſhall doe the reſt of the office, otherwiſe his title is not good, as appeareth in Pl. 36. Ed. 3. Trauerſe. 44. and 46. Liuerie 18. Pl. 36. E. 3. f. 4. Pl. 3. H. 4. 14. and Pl. 3. H. 7. f. 14. Howbeit Huſſey holds opinion T. 1. H. 7. 28. that no man may

trauerſe

trauerſe the tenure, but the lorde or the heire, vnleſſe his title be found by office, but whether the Law be ſo or not, learne, for as I take it, the lord and euery ſtranger that hath a title againſt the king, making his title, ſhall trauerſe the office before his title bee found by office, for when the trauerſe is found for the partie, his title nowe appeareth of record, and by the trauerſe found, the office which was the kings title, is vtterlie deſtroyed and gone, ſo that now the king is not to make anie liuerie of the landes to anie perſon, but onely to amoue his hands from the ſame, with the meane iſſues, and profites, as one that had no cauſe to ſeiſe them. And therefore euery man may enter nowe that will, if he haue right or title of entrie to the lands, for the king deliuereth them to no perſon certaine, but only riddes his owne hands of them as he that had neuer ſeized them: but otherwiſe it is where the king is to make liuerie, for there his highnes muſt be informed certainly by matter of record who ſhall be his tenant, and who it is that ought to receiue the liuerie at his handes, leaſt his highneſſe be deceiued in the admitting of his tenant, which is, and ought to be a great matter towards the lord, and therefore the caſes be not like, wherefore I thinke a man may trauerſe by force of the Statutes, without hauing their title firſt found by office: and ſo bee our Bookes 19. 36. E. 3. Trauerſe 44. 19.12. E.4. fol.18. 19.16. E.4. fo.4. and 43. li. Aſſ. 19.20. Howbeit Trauerſe 45. T.5. E.4. fol.5. ſeemes to way to the contrary hereof. And 19.12. H.6. alſo, where it is ſaid, that if it be found that the kings tenãt died ſeiſed, where indeede he was iointly enfeoffed with me, now can I not trauerſe this office except an other office were found for me. But contrary law ſhould it be, if I had beene found by the office iointenant with him for terme of life, where indeede I was iointenant with him in fee ſimple, in this caſe I may trauers the office, becauſe mention is made of me in ỹ ſaid office: this booke caſe admitted to be Lawe, yet it varieth from the caſe before remembred of the ſtranger,

that

that trauerſed thoffice, for here thoffice is true, and when it is found by office that he died ſeiſed, this may be although the ſaid dying ſeiſed were iointly with an other, for any thing that is expreſſely found to the contrarie, and then the king here is to admit an other tenant, as in the caſe of the liuery before when as yet he hath no credible information, that is to ſay, by matter of record, and then it is like to the caſes of tenant by the curteſie, tenant in dower, and the deuiſe, which in no wiſe can be admitted to their eſtates, vnles mention be made of them in the office or ſome other office or matter of record found for them, as appeareth in Ꝑ.9.H.7.f.24. Briefe 618. Ꝑ.46.E.3. and Ꝑ.11.H.8. Deuant fol. 17. and for none other reaſon as I gather it, but onely for that thoffice is true, & they are to be admitted the kinges tenants, which cannot be but by information by matter of record, vt ſupra. Then let vs reſort to the place wee were at before, that is to ſay: No man may trauerſe with the king, vnleſſe he make him ſelfe a good perfect title, as to ſay that the tenant which is ſuppoſed to die ſeiſed dyd infeffe him, or that a ſtraunger was ſeiſed & did infeffe him, without that, that he died ſeiſed. And ſo note by the way, that he may conuey his title aſwel from a ſtrañger, as from him that is ſuppoſed to die the kings tenant, as appeareth in Ꝑ.36.E.3. Trauerſe 44. and when he hath made thus his title, then he muſt trauerſe the kings title, which is thoffice, for it is not enough for him to reſt vpon his owne title although it be neuer ſo ſtrong, without anſwering the kings title, yet although it were good againſt a common perſon, yet againſt the king it is not ſo without trauerſing ỹ office. And therefore if he wil ſay that his tenant in his life tyme did leuie a fine vnto him of theſe lands, Sur conuſance de droit, come ceo que il ad de ſon done, by virtue whereof he was ſeiſed, vntil ſuch time as he was put out by this office, and prayeth reſtitution, this is no plée againſt the king, & yet this matter were a good plée in Aſsiſe of Mordanc'

brought by the heire, for in that caſe he ſhould be eſtopped by this fine, which is executed, to ſay the contrarie thereof, that is to ſay: that his father died ſeiſed without ſhewing how his father got the poſſeſſion againe ſince the time of the fine leuied. But it is no plée againſt the king, for the king cannot be eſtopped, namely in this caſe, being a ſtranger to the record. And alſo the ſtatute giues a trauerſe, and by this maner of pleading he taketh no trauerſe. Like law is it, if it be found by office that the kinges tenant in chiefe infeffed one B. without lycence, comes one D. and ſayth, that he dyed ſeiſed, and his heire entred and infeffed him by the kinges licence, this is no plée without trauerſing the feffement made to B. and yet againſt any common perſon it were a good plée, but not againſt the king, for his title muſt be anſwered fully: and that is the feffement, and theſe caſes appeare in Trauerſe 17. P. 46. E. 3. fo. 43. Li. aſſ. P. 20. Alſo it is not ſufficient to trauerſe one of the kinges titles, but he muſt trauerſe them all, for though the kings title that he is ſeiſed by, be found not good, yet if there be any other record that makes the king a title whereby he may retaine the landes, the partie muſt auoide alſo the title, or els he getts no Ouſter le maine. P. 9. H. 4. fo. 7. but learne if there be no ſuch record in Eſſe or being at the time of the trauerſe tended, and hanging the plée vpon the trauerſe a new record, that is to ſay: an office is founde which intitleth the king, whether in this caſe the partie ſhalbe driuen to trauerſe this office or not, ere he haue his Ouſter le maine. And it ſeemeth he ſhall not, for ſo he might be delayed of his poſſeſſion infinitely by finding one office after an other, wherefore this office found, hanging the trauerſe ſhalbe accompted in law as though it had bine found after the partie had had his Ouſter le maine. In which caſe then the partie vpon the firſt trauerſe found for him, ſhalbe reſtored to his poſſeſſion by an Ouſter le main, and then after vpon a Scire facias ſued againſt him to

ſhew

ſhew why theſe landes ſhould not be releſſed: vpon thys new office found for the king, he ſhalbe receiued in that Scire facias to trauerſe thys new office. Howbeit thys aduantage he winnes hereby, that is to ſay: he then trauerſeth with the king, képing ſtill his poſſeſſion, where els hée ſhould trauerſe being ſtill out of poſſeſſion. And thys caſe ye may find T.11.H.4.fo.80. and M.13.H.4 fo.8. Thus may ye ſée when a man trauerſeth with the king, he muſt trauerſe al the kinges titis that haue then their being by matter of record, & is not bounden any further to anſwer for that time: Then let vs ſée how the kinge ſhall reply vnto this trauerſe: and in that it is to be noted, that the king hath a prerogatiue that a common perſon hath not, for his highnes may chooſe whether he will maintaine the office or trauerſe the title of the party, and ſo take trauerſe vpon trauerſe, or when all his titles be trauerſed, his highnes may chooſe to mainteine them all, or els but one of them, M.13. E.4.fol.8. But then note, that if he maintein but one, that is to ſay, take iſſue but vpon one which is found with hym that tendeth the trauerſe, In this caſe the partye ſhall haue his Ouſter le main, notwithſtanding there be no iſſues taken vpon the other title, H.4. H.7. fol. 5. but whether the king ſhal euer take aduantage of thother titles after or not, this is to be ſéene: and I thinke he ſhould, for though the other titles ſhal not in this caſe let the partie of his Ouſter le maine, yet it ſéemes the king may cal the partie againe by a Scire facias to aunſwere his other titles, or els hys highnes to releiſe, as I ſaid before, for no Nient dedire can prejudice the king, nec tacita renunciatio, like as it may do a cõmon perſon. And therfore ſéeing he did not renoũce his other titles openly nor expreſſely, it ſéemeth his highnes by his Prerogatiue ſhall haue aduantage of them at any other time, when it ſhalbe his pleaſure. And theſe caſes ye may ſée M.9.H.4. fo. 6. Howbeit it appeareth in the

ſaid booke of P.13.E.4.fo.8. that after the king ioyneth an iſſue vpon a trauerſe, his highnes cannot in any other terme waiue this iſſue & take a new, for ſo the party might be delayed infinitely of his right, which ſhould be as it were a wrong committed vnto the partie, and the king by his Prerogatiue may do no man wrong: but after iſſue ioyned he may demurre in law, and waiue the iſſue, for there is no matter chaunged, but the old remaineth. P.3.E.4.fo. 26. And by the demurrer the law preſumeth that the iſſue was ioyned, and ſo might be a Ieofaile, and therefore his highneſſe may demurre in law after iſſue, but not chaunge his iſſue and take a new. And note, that if the partie take a trauerſe which is iudged inſufficient in the law, this is peremptorie vnto him, and he ſhall not be receiued after to take a new, as appeareth in 40. Aſſiſe 24. Howbeit T.14 E.4. the contrarie opinion is holden, and that it is not peremptorie, becauſe it procedeth in the Chaunceric, which is the Court of Conſcience. But as to that a man may anſwere and ſay, that a Chauncelour hath two powers, the one abſolute, the other ordinarie, and this trauerſe is before him by an ordinarie power, in which caſe all things touching the ſame muſt procede as it ſhould before any other ordinarie Iudge of the common law, and therefore it ſhould appeare by a booke in H.4.H.6.fo.2. and H.11. H.4.fo.25.P.22.E.4.fo.9. Trauerſe 12. H.3.H.7. that if the party be nonſuit in his trauerſe, it is peremptory vnto him, for ſo might he delay the king infinitely, Tamen quære: & learne whether one may procede with a trauerſe the heire being within age, or els ſhall tarry till he be of full age, for the booke is in T.5.E.4.fo.5. that he ſhal tarry till the heire commeth to age. But in this queſtion one may make this diſtinction, that is to ſay: Whether the trauerſe be tended by a ſtraunger, or by the heire (for ſometimes it happeneth that the heire ſhal trauerſe aſwel as a ſtraūger.)

For

For no more then a ſtraunger can haue Ouſter le maine without trauerſing al the kinges titles, no more may the heire haue liuerie without trauerſing all his titles, and then if the trauerſe be to be taken by the heire, he ſhall not bee thereunto admitted vntill he be of age, becauſe that before that time he hath no cauſe to haue his liuerie. But that reaſon ſerues not where the trauerſe is to be taken by a ſtraunger, and therefore it ſhould ſeeme that he ſhould haue it by and by: For he hath cauſe to haue an Ouſter le main forthwith, and that with the meſne iſſues and profites, and therefore it were no reaſon that the nonage of a third perſon ſhould hinder him, with whom he is not to pleade, or to trie any right but onely with the king. For if the child haue right, he may enter vpon the ſtraunger after he hath his Ouſter le maine and trie his right with him: and ſo at no miſchiefe. And note as I ſaid before, that the heire muſt trauerſe all the kinges titles ere he can haue liuerie, and that whether the kinges title be in his owne right, or in the right of an other in his owne right, as if there be a recorde that proues his land to bee alyened wythout the kinges licence, or that the auncestor of the Infant that would ſue his liuerie, was but tenant for terme of lyfe, the reuerſion to the king, and hath made a feoffement to the kinges diſheritance, or ſuch like: In theſe caſes notwythſtanding the king dyd not ſeyſe by virtue of theſe Recordes, but onely by virtue of the office, wherby found the auncestor of the infant dyed ſeiſed, the kinges tenant in chiefe of eſtate in fee ſimple, yet the heire getteth no generall liuerie vpon the office, vntyll ſuch time as he hath auoyded theſe other Recordes. And if hee haue it before, it is a cauſe of reſeiſure. So is it where the Kynges title is in right of any other, as if one bee found heire by office, and after by an other office an other is found heire

of the ſame landes to the ſelfe ſame anneſtor, in this caſe he that was firſt found heire cannot haue his generall liuerie, vntill ſuch time as hée hath deſtroied the other title either by an enterpleder, or a trauerſe, for if it ſo come to paſſe that he cannot enterpled, then muſt he trauerſe, or by ſome other meanes auoyd the record ere he can haue hys ſaid generall liuerie, as if he ſue his generall liuerie otherwiſe, it is then miſſued, and a good cauſe giuen to the king to reſeiſe. And this enterpleder or trauerſe betweene them that claime as heires, is by the order of the common law, and not by ſtatute, and can neuer bée, but where both their titles be found firſt by office. And the reaſon is, becauſe as ſone as the matter is diſcuſſed betweene them, hee for whom it is found ſhall forthwith haue his generall liuerie, which he can neuer haue, if his title bee not firſt found by office: and therefore not like the caſe where a ſtraunger trauerſeth with the king, that is, to haue but an Ouſter le maine, for there the king had no right to ſeiſe, and therefore his title néede not to bée found by office, as I haue ſaid before. But in the other caſe whoſoeuer ſhall claime the land as heire, his highneſſe hath right to ſeiſe in the right of the ſaid heire and to haue his primer ſeiſin or wardſhip, as the caſe doth require. And therefore his title muſt bée firſt found by office: but where one heire is to trauerſe wyth an other heire during the kinges poſſeſſion, this ſhal not bée, vntill hée that is firſt found heire by the office come to age, becauſe vntill that time the landes ought to remaine in the kinges handes and then hée to haue liuerie: but whether hée that was firſt found heire ſhould tarrie for thage of him that was laſt found heire, I haue ſaid my minde therein before in the title of Enterpleder chap. 19. But where a ſtraunger is to trauerſe, he ſhall not tarrie for the age of the heire for the cauſes before remembred.

And

And ſo there appeareth to be a great difference betweene a trauerſe taken by him that is a ſtraunger, and by him that is heire. But at this day moſt liueries that be ſued, are ſpeciall liueries, which containe in them ſelues a pardon, and therefore the miſſuing of them is diſpenſed withall by the wordes of the pardon contained in the ſaid liuerie. And ſo many of theſe thinges that I haue ſpoken of before are not much to be obſerued, if the liuerie or Ouſter le maine bee not generall. (For I ſee no let, but that an Ouſter le maine may be graunted ſpecially, aſwell as liuerie.) And laſt of all it is to be noted, that this trauerſe extendes not to euery record that entitleth the king, but onely to ſuch recordes as be trauerſable: as an office, or ſuch like, as I ſhall ſhew my mind therein more fully in the chapter of Petition. Other trauerſes there bee which bee trauerſes by order of the common law. And not by any ſtatute, as trauerſes vpon endictments or preſentments, whereof I intend not to intreat in this place: among which trauerſes there is alſo by order of the common law a trauerſe concerning goodes and cattels of perſons attainted, for the which a man ſhall trauerſe with the king, although hys title thereunto bee by double matter of record. As take the caſe to bee, a man is attainted of Treaſon or Felony, or outlawed in a perſonall action, and after by office it is found that hee was poſſeſſed of a horſe or any other goodes as his owne proper cattell, where in deede they bee the goodes of a ſtraunger: in thys caſe the ſayd ſtraunger ſhall trauerſe this office with the king. 9. H. 4. E. 4. folio 24. 9. H. 13. E. 3. fol. 8. and 9. H. 47. E. 3. folio 26. So is it, if it bee found by office, that a man Outlawed in a perſonall action, is ſeiſed of certaine landes, which in deede are my landes, and the eſchetour by force of that falſe office takes the profites: In this caſe I may diſtrayne hym

without trauerſing thoffice. And this caſe appeareth E.3. H.6.fo.10. Then further. The wordes of the ſaid ſtatutes of Anno 36. bee, that if any come before the Chauncelor and ſhew his right, whereby it may appeare by good euidence that he hath an auncient right and good title, then the Chauncelor ſhall let the ſaid landes to the partie that tendeth the trauerſe, yelding to the king the value, if it be adiudged for the king in maner as he and the other Chauncelors haue done before him by their good diſcretiõs, ſothat hee to whom it ſhalbe letten, finde ſuretie to do no waſt or deſtruction before the trauerſe be diſcuſſed. By the wordes of this ſtatute it ſhould appeare that the Chauncelors before this tyme by their diſcretions had vſed to let the landes to the partye to farme: and that is true, for the king vſed ſo to do vpon a petition whych was made to his highneſſe by the order of the common law in ſtede of a trauerſe now vſed, as appeareth H.5. E.3.fo.6. and therefore I thinke his highneſſe may do ſo at this day both vpon a petition, and a Monſtrance de droit, although the ſtatute make no mention thereof, for ſo it was vſed to do by order of the common law, as it appeareth by the bookes before. And of this matter ſée Trauerſe 12. H.3. H.7. Now is this ſtatute amplified and made plainer in this point by the ſtatute made in the 8. yeare of H.6. the 16. chapter, which will, that no lands or tenements ſeiſed into the kings hands vpon enqueſt taken before Eſchetors or Commiſſioners be in any wiſe graunted or letten to ferme by the Chauncelor or Treaſorer of England, or any other the kinges Officers, till the ſaid enqueſtes or verdictes be returned fully into the Chauncery or Eſchequer, but all that time ſhall abide in the kinges handes, and by a moneth after the ſaid returne, if it be not ſo, that he or they that ſeke them ſelues greeued by the ſaid enqueſt, or that are put out

of

of their landes and tenements, come into the Chaunce-rie and offer to trauerſe the ſayd inqueſtes, and to take the ſaid landes and tenementes to farme, which if they do, then the ſaid Chaunceller, Treaſorer, and other officer ſhall let them haue them to farme, ſhewing good euidence, proouing their trauerſe to bee true according to the forme of the ſtatute of Anno 36. E. 3. to hold till the iſſue vpon the ſaid trauerſe taken, bee found and diſcuſſed for the king or els for the partie, and alſo finding ſufficient ſuertie to purſue the ſaid Trauerſe with effect, and to render to the king the yerely value of the tenementes whereof the trauerſe ſhall bee ſo taken, if it bee diſcuſſed for the king. And if any leters patentes of any landes or tenements bee made to any other perſon to the contrary, then the ſame to be voyd after the moneth.

Hereupon it is to be noted, that the ſhewing of the euidence is onely reherſed to the letting of the lands to farme, and not to the trauerſe. For by this ſtatute he may trauerſe without ſhewing any euidence, but not haue the landes to farme. Alſo by theſe Statutes hee is not bound to no certaine time for taking of his trauerſe, but onely for taking of the lands to farme, for he may tend his trauerſe when he will, ſo he deſire not the farme of the lands. But if he will haue them to farme, he muſt tende his trauerſe within the moneth, as appeareth 39. 13. Ed. 4. folio 8. and now by the ſtatute of Anno primo H. 8. cap. 16. hee hath three monethes libertie to do it. Alſo note the thinges that he muſt find ſuertie for, that is to ſay, to ſue it with effect, to pay the rent after the trauerſe be diſcuſſed, and to doo no waſt or diſtruction: In this word, Rent, is imployed all the arrerages of the rent that ſhall incurre meane betweene the taking of the farme, and the diſcuſſing of the trauerſe, and yet it is not ſo expreſſed. Alſo the leaſe that is made to him that tendes

the

the trauerſe is not of any terme certaine, but onely by theſe words, Donec diſcuſſum fuerit, for the wordes of the ſtatute be ſo, and therefore as ſone as the trauerſe is found againſt him that tendeth it, by and by the leaſe bee had in the lands by force of the ſtatute, is voyd, without any further proces, as appeareth in H. 4. E. 4. fo. 29. Howbeit for as much as the wordes be, to hold till the iſſue vpon the ſaid trauerſe taken be found and diſcuſſed for the King, or for the partie, I would learne if the partie bee nonſuite vpon his trauerſe, or that the trauerſe be adiudged againſt him vpon a demurrer in lawe, whether the leaſe ſhould be voyd or not, like as it ſhall bee vpon the iſſue found. And it ſeemes it ſhall be by the words compriſed in the ſaid ſtatute of Anno 36. E. 3. But not by any wordes compriſed in the ſaid ſtatute of Anno. 8. H. 6. For the words be, Tanque il ſoit adiudge, and therewith agreeth the booke in H. 4. H. 6. fol. 12.

Alſo note, that before this ſtatute of Anno 8. H. 6. the King did vſe to grant the cuſtody both of the landes and bodie to any other to whom he would after office, and before any trauerſe tended, and this graunt was good, becauſe it was not then reſtrained by any ſtatute. Howbeit, vpon the trauerſe tended, a Scire facias ſhould haue bene awarded againſt the patentee, comprehending in the ſame all the trauerſe. And if hee had bin returned warned, and came not, his patent had bene void eo facto, as appeareth in the ſayd booke of H. 4. H. 6. fol. 12. at leaſt vnto for the lands, and yet there was then no eſtatute that made them void, quod nota.

And then by and by they ſhould haue bin letten to farme to him that had tended the trauerſe. But now whether ſince the making of the ſaid ſtatute of Anno 8. H. 6. a Scire facias ſhall bee awarded againſt the patentee vpon a trauerſe, learne: for the ſaid ſtatute makes ſuch letters

patents voyd for the graunt of the landes, but not ſo for the bodie, and therefore it ſéemes a Scire facias ſhall bée ſtill awarded, and the grant alſo of the ſaid landes is not voyd, till after the Moneth. And now by the ſaid Statute of Anno 1. Hen. 8. not till after thrée monethes, and ſo it ſhould ſéeme by the booke of M. 5. E. 4. folio 13. M. 14. E. 4. fol. 1. H. 8. H. 6. folio 7. that a Scire facias ſhall be awarded at this day notwithſtanding the ſtatute of 18. H. 6. cap. 6. which ordeynes that all letters patentes made before the Kings title found by inquiſition returned into the Chauncerie, or other matter of record ſhalbe void. For that Statute alſo extendes but to landes and tenementes no more then the other Statutes doe, ſo that the graunt of the bodie, or of any other thing which is no land or tenement, is good at this day before any office or inquiſition thereof found.

And it is further to be noted, that this ſtatute of Anno 18. H. 6. makes not ſuch letters patentes good for any time which be graunted contrarie to the tenure of that ſtatute, but they be voyd forthwith. And learne and inquire if at this day within one moneth, or thrée monethes after office found and returned to the maſter of the kings wardes and lineries with aduiſe of one of the counſell of the kings Court of wardes and lineries, made a leaſe of the wardes landes, or of an ideots landes being in the Kinges hands for the time of the Kinges intereſt in the ſame, and after within the time appointed by the ſtatute cometh a ſtranger and trauerſeth the office, whether in this caſe he ſhall haue the lands to farme or not. And it ſéemes that no, becauſe this ſtatute that gines that power to the maſter of the kinges wardes, was made long time ſince the ſtatutes of Anno 8. or 18. H. 6. that is to ſay, in the 32. H. 8. cap. 40. which ſtatute is generall, and no ſauing or exception made of the other ſtatutes before.

And

And then it is a generall rule, Quòd poſteriores leges priores contrarias abrogant. And ſome thinkes at this day for wards lands, or Idcots landes, there ſhall bee no letting of them to farme to him that tended the trauerſe, if they were letten before the trauerſe tended by the maſter of the kings wards: but of other wardes it remaines as it was before the making of this Statute of Anno 32. H. 8. And note, that if the king ſeiſe not for any wardſhip, but onely for primer ſeiſin, becauſe the heire is of full age, if a ſtraunger in this caſe will trauerſe, it is to litle purpoſe. For if the king by and by after will make liuerie to the heire, the trauerſe is become void, as appeareth M. 1. H. 7. fol. 27. for the king in that caſe hath no cauſe to retayne the land, but to deliuer the ſame to him, in whoſe right hee ſeiſed, being able for it, and he that tended the trauerſe is at no miſchiefe, for he may now after this liuerie purſue for his remedie againſt the heire, and if it ſhould tarry in the kinges handes for the trauerſe ſake, his highneſſe ſhould then haue all the profits, if the trauerſe were found with him for all the time that the ſayde trauerſe did depend, whereunto his highneſſe hath no right, but onely the heire, And therefore it ſeemes there ſhall be no trauerſe, but where the land is to abyde in the Kinges handes for a certaine time, as for Wardſhippe, fine for alyenation, or ſuch like. But if hee that tended the trauerſe be found heire by office, and is to haue liuerie of that land, as well as the other that was firſt found heire, otherwiſe it is for the reaſon made before. And ſo of an enterpleder. For in that caſe the king is bound to make the liuerie to him that is tried rightfull heire, but not ſo in the caſe of a Trauerſe tended by a ſtraunger, which claymes not as heire, for hee is to haue no Liuerie, but onely an Ouſter le mayne, by which Ouſter le maine, the king deliuereth nothing, but leaues his owne poſſeſſion,

as

as one that hath no right to kéepe the poſſeſſion any longer. And it appeareth ſufficiently, that he had no right to kéepe it, after the time the heire that ſhould haue it was of full age. Wherefore a ſtraunger in that caſe cannot trauerſe, for ſo two that had no right by trauerſing together might kéepe the third that hath right from his poſſeſſion, which was neuer the meaning of the makers of the ſaid ſtatutes. And notwithſtanding that this booke T. 1. H. 7. fol. 27. be that after the trauerſe, and before the farme graunted the liuerie was made, yet that makes no difference: for whether the farme were graunted béefore the liuerie, or after, when the trauerſe is become void by the liuerie, the farme which dependeth vpon the ſame is alſo voyd, as mée ſéemeth. And note alſo that the ſaid ſtatute 1. H. 8. cap. 10. which gæues thrée monethes for hauing the lands to farme makes no mention of the Treaſorer of England, but onely of the Chanceller, ſo that for any thing that is to be letten by force of that ſtatute, it muſt be done onely by the Chaunceller, and not by the Treaſorer: as it ſhould ſéeme, as well of offices returned into Theſchequer, as into the Chauncerie, and therefore within the moneth after an office returned into the Eſchequer, the Treaſorer may let the landes to farme to him that tendes the trauerſe according to the ſaid ſtatute 8. H. 6. But if it be to lette after the moneth, the Chanceller of England muſt do it as it ſhould ſéeme. And note alſo that by a ſtatute made Anno 1. H. 8. cap. 12. Any perſon that ſued his liuery in time of King Henry the ſeuenth vpon any office that found he held in chiefe, where in déede he held not in chiefe, which ſaid offices were found by the procurement of Empſon and Dudley in the time of the ſayd late King, may trauerſe thoffice in like maner and forme as hée might haue done before the liuerie ſued, if it be ſo that he be now ſeyſed of the ſame lands, ſauing that he ſhall not be reſtored to the meane ſſues and profites.

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This ſtatute ſéemes not to extende to the parties heires that had liuery, but onely to the partie him ſelfe. Quęre hoc. And note that in the Court where the office is firſt returned into, there I ſhall tend my trauerſe: as if it be returned into the Chancery, then in the Chancerie, and if in the Eſchequer, then in the Eſchequer, as in déede all offices virtute officij are returnable in the Eſchequer onely, and ſuch as be Virtute breuis vel commiſsionis, be returnable in the Chancery. H.4.E.4.fo.24. And now by the ſtatute of 33.H.8.ca.22. No eſcheto⁊ may ſit virtute officij onely to find any office of lands holden of the king of the value of v.li. o⁊ aboue, vpon paine to lo⁊fait v.li.

# Monſtrance de droit. Cap.xxi.

THe ſtatute of Anno 36.E.3. that giueth a trauerſe, ſaith in this wiſe: Et ſil eit nul home qui met challenge ou claime as terres iſsint ſeiſies que leſchetor mand' lenqueſt en la Chãcellary deins le mois apres les terres iſsint ſeiſies, & que briefe luy ſoit liuer de certifier la cauſe de ſa ſeiſin en la Chancellary, & illonques ſoit oye ſans delay de trauerſer loffice ou auterment monſtrer ſon droit, & illonques mande deuant le Roy a faire final diſcuſsion ſans attender auter mandement. This ſtatute ſpeakes both of trauerſe and Monſtrance de droit diſiunctiuely, whereby a man may gather that if Monſtrance de droit were not by the o⁊der of the common la we, as it is ſayd H.9.E.4.fol.52. and H.13. E.4.fol.8. that it is: yet were it giuen by this ſtatute. And no booke that beares date befo⁊e this ſtatute can I finde that treates any thing of Monſtrance de droit. Wherefo⁊e

(without

(without preiudice to any mans opinion) mine opinion is, that it is giuen onely by this ſtatute: but whether it bee ſo, or not ſo, I do not greatly force. Let vs ſee what it is, and in what caſes it lyeth. If the King bee intitled by office or other matter of Record, that is trauerſable. Howbeit there is no cauſe of trauerſe, for that the office or record is true, in this caſe any man that hath right to the poſſeſſion of the freehold of this land, which in ſhewing of his right is able to confeſſe this office, and auoyd it, ſhall bee received (if he be put out of his poſſeſſion, or greeued thereby) to come into the Chauncerie and ſhew his ſaid right, which being there proued to be true, iudgement ſhall bee giuen that the Kinges handes bee amoued from the poſſeſſion of the ſaid landes with the meane iſſues and profits to be reſtored vnto the partie that ſueth the ſaid Monſtrance de droit.

As for an example, If it is found by office, that the kings tenant by Knightes ſeruice in chiefe dyed ſeyſed of certaine landes which are diſcended to his heire being within age, where in deede in his life time I recouered this land againſt him, and ſuing no execution, ſuffered him to dye ſeyſed thereof, now vpon this office returned into the Chauncery, ſhall I come and ſhew my right, that is to ſay, this recouerie, & auerre that this land found by office is the land that I recouered, or parcell thereof, which beeing ſo proued and tried, I ſhall haue an Ouſter le maine 9.3.9.7. Like law is it if the kings tenant diſſeiſed me of thoſe lands, and I made my continuall claime, or that I had title to enter for condition broken into the ſaid landes in the life of the kinges tenant, and I entred, and after was diſſeiſed by him. But quære if I did not enter in his life, whether now I may be holpen by a Monſtrance de droit vpon the Kings poſſeſſion. And mee thynkes not, becauſe I haue no ryght in that caſe tyll I enter, for vntill that tyme the ryght continueth ſtill in hym, ſo that the kinge hath a right ere I can haue a right, which

ought

ought to bee preferred and take place, ſince it is but for a time before mine. And for theſe caſes ſée the booke of H. 3. H. 7. fol. 2. But if the king be intitled by matter of record, not trauerſable, as if hée be intitled by double matter of record, in this caſe I cannot haue my Monſtrance de droit, no more then I can haue in the like caſe of Trauerſe, vnleſſe my title be found by one of the ſayd records. H. 9. E. 4. fol. 51. As take the caſe to bée, It is found by office that one ſuch that holdeth of the King diſſeiſed me, and then committed a felony, vpon whom I entred, after which entrie the ſaid tenant was attainted of the felony. In this caſe I ſhall haue the land out of the Kings handes by a Monſtrance de droit: cauſa qua ſupra. And yet the kings title is here by a record, and not trauerſable, that is to ſay, the attainder. But what then? My title is alſo found by office, and appeareth by matter of record, which being proued true, doth clerely auoyd the Kings poſſeſſion, and that is the reaſon I ſhall bée receyued in this caſe to a Monſtrance de droit, as appeareth in H. 3. E. 4. fol. 26. A. 4. H. 7. fol. 6. And therewith agréeth the booke H. 4. H. 7. fol. 7. where King Richard the third was attainted of treaſon by Act of Parliament, and found by office that hee was ſeyſed of certaine land, commeth one B. and ſayth, that in the ſaid Parliament it was enacted, that an attainder of Treaſon had againſt the father of the ſayd B. ſhould be auoyded and annulled, and hee reſtored to his landes, and that theſe landes comprized in the office were in the hands of the ſaid king Richard by attainder of his father, and adiudged that vpon this Monſtrance de droit the partie ſhould haue reſtitution, becauſe his right appeared by matter of record. Otherwiſe is it where it is found by office that ſuch a one is attainted of felony, and is ſeiſed of ſuch lands which are holden of the king, now he that hath cauſe to ſue his Monſtrance de droit, cannot be admitted thereunto, by reaſon of theſe two Records. Howbeit, if it be ſo that there is ſuch attainder in déede,

then

then may the partie that would ſue a Monſtrance de droit ſay that there is no ſuch record of attainder: which being found true, he ſhalbe received to his Monſtrance de droit, as appeareth in the ſayd booke P.4.H.7.f.7. For now is there no record againſt him but onely the office, and notwithſtanding that by thoffice that attainder is found, yet this finding makes nothing for the king, if it be untrue For the iurie can neuer find a matter of record, & if they do, it is to litle purpoſe: for the record is euer triable by it ſelfe, and if there be ſuch a record it wil appeare though they find it not, and if there be none, the finding of it is voide. Thus may you ſée that a Monſtrance de droit lyeth ſome times although the king be entitled by doubled matter of record, if it ſo be that the parties title appeare by matter of record, or els it lyeth not. And yet Chooke, Littleton & Nedham held opinion in P.14.E.4.7. that if it bée found before the Eſcheator that one was tenant in taile of certayne landes holden of the king, the remainder to another in fée, and that hée in the remainder is outlawed of felonie, and the tenant in taile is dead without iſſue, where in déede he béeing tenant in taile before the Statute De donis condicionalibus after that he had iſſue enfeoffed one B. In this caſe the ſaid B. ſhall ſhew this matter, and that the vtlagary was after the feoffement made, and ſo haue the lands out of the kinges handes by a Monſtrance de droit: But it ſhould ſéeme their opinion is againſt the law and the bookes before rehearſed, vnleſſe this feoffement were found by office, becauſe it appeareth that the king in hys caſe is intitled by double matter of record. And note that where the king is entitled but by office alone, there ŷ partie may haue his Monſtrance de droit although his title bée not found by office, aſwell as hée ſhould in the like caſe if he were to take a trauerſe. H.9.E.4.5. but otherwyſe it is where the king is entitled by another record beſide the office which is not trauerſable, there hée ſhall not be

receiued vnlesse the parties title appeare by matter of record. And note, that if the king haue committed the land ouer, he that sueth his Monstrance de droit must sue a Scire facias against the Committée, euen as he should vpon a trauerse, and as for taking the landes to ferme, or for suyng the said Monstrance de droit during the time the heire in whose right the king hath seised, is within age. Like law is to be vsed as is before declared vpon the title of Trauerse chap. 20.

## Petition. Cap. xxii.

PEtition is all the remedie the subiect hath when the king seiseth his land, or taketh away his goodes from him, hauing no title by order of his lawes so to do, in which case the subiect for his remedie is driuen to sue vnto his Soueraigne Lord by way of Petition onely: for other remedie hath he not, as it hath bine sufficiently declared before vpon the 15. Chapter of the kinges Prerogatiue. And therefore is his petition called a petition of right, because of the right the subiect hath against the king by the order of his Lawes, to the thing he sueth for. And this petition may be sued aswell in the Parliament as out of the Parliament, and if it bée sued in the Parliament, then it may be enacted and passe as an act of parliament, or els to be ordred in like maner as a petition that is sued out of the parliament, which is in this maner: First after the petition is endorced, it shalbe delinered to the Chauncelor of England, and then shall there bée a Commission awarded out of the Chauncerie to find the right or title of hym that sueth the petition, which being found by enquest, then be

he may enterplead with the king and not before, as appeareth in H.18.E.3.f.15. H.4.E.4.f.23. H.11.H.4.f.52 and H.10.H.4.f.4. And if vpon the said Commission no title be found for the party but only for the king, yet the petition shall not abate, but the partie shall haue a new Commission in that case, for the petition is but as void until the parties title be found by office, and is not to be said depending vntil that time, as appeareth in H.3.H.7.f.13. quere for he sued a new petition in that case. And note, that when the petition is endorced, the partie must follow and pursue the same according to the indorcement, or otherwise hys suit is voide: because the endorcement is his warrant therin, as appeareth in Petition 1.H.18.E.3. H.22.E.3.5. and Petition 18. H.46.E.3. and therfore some time bills of petition be endorced and sent into the kinges Bench or Common place, and not into the Chauncerie, & that groweth vpon a speciall conclusion in his petition, and a speciall endorcement vpon the same, for the general conclusion is, que le Roy luy face droit & reason, which is as much as if he had prayed restitution of that that he sueth for: And there vpon such a generall conclusion the endorcement is Soit droit fait as parties which euer is deliuered vnto the Chauncelor, as is declared. But if the conclusion in the petition be speciall & the endorcement speciall, then they shall proceede according to the said speciall endorcement. As for example, The king recouereth in a Quare impedit by default against one that was neuer sommoned: in this case the partie that lost cannot haue a writ of Disceit vntil such time as he haue sued vnto the king by petition for the sayd writ, & if in his petition he conclude and pray that the king do him right generally, now the Iustices before whom the recouerie was had cannot examine the disceit without an original writ directed vnto them for that purpose, and yet before he obtayned that writ his right shalbe enquired of by commission, but if he conclude specially in his petition that

it may please his highnesse to commaunde the Justices to proceede to theraunination, which petition is endorced accordingly, then may they do it without any such writ or commission to be sued, as appeareth in M.10.H.4.fol.4. Howeuer the following & the pursuing of a thing must be according to thendorcement, for howsoeuer the conclusion in the petition be, the endorcement may be alwaies as it shal please the king as mee seemeth, and according to that the partie must pursue it. And note that in euery petition where the king hath graunted the land ouer to another, a Scire facias must be awarded against the Patentee, like as it shal be where a Trauerse or Monstrance de droit is tended, which patentee if he haue not the whole fee simple but that there is a reuersion in the king, or that the king is bound to warrantie, when he appeareth vpon the Scire facias he may pray a writ of Search to be awarded into the Treasorie to search what they can find for the kings title, as it appeareth in H.9.E.4.fo.51. where Sottle saith, that euery petition must make mention of all the kinges titles, for if it be found by the writ of search that any be omitted, the petition shall abate: and the reason of it is because that if on this suit of petition the king take an issue with the partie which is found against him, his highnes then shalbe concluded for euermore to claime by any of the pointes contayned in the said petition. And herewith agreeth the booke T.16.E.4.fo.6. but quære if search shalbe graunted vpon a trauerse or Monstrance de droit, because the statute of Anno 14.E.3.ca.13. that concerneth search doth speake onely but of a petition, but to that it may be said that at the time of making of the statute there was no trauerse giuen. And Skrene saith Petition 6.A.7.H.5. that search shall not bee graunted but where one sueth by petition. And note also that in euery Petition whether it bee sued in the Parlyament or els where, or whether the landes remaine in the kinges handes or not in the kinges

handes

kinges handes but be graunted ouer, yet writs of search shalbe awarded to search the kinges title ere the partie shal enterplead with the king. Also it appeareth in the booke of M.16. E.4.fo.6. before remembred, that vpon a petition the kinges Patentée had ayde of the king: and there appeareth also, that if the king be not intitled by any matter of record, but without any title do enter into my land whereby I sue vnto his highnesse by petition, that in this case no search shalbe graunted, because no title can be entended for the king in such case: Thus haue I opened and declared the maner of suyng a Petition, but to declare specially where it lyeth and where not it were a long matter to entreat of. But generally and by generall rules a man may briefely declare it: That is to say, in all cases where the partie hath a right against the king, and yet no Trauerse or Monstrance de droit will serue, there is he driuen to his Petition: As for example, where the king is intitled by double matter of record. Like law is where he is intitled by a record not trauersable, as take the case: The kyng recouered by assent and without title, a straunger that hath good title shall not falsefie this recouerie by a Trauerse or Monstrance de droit, but is driuen to his petition, so it is where the king recouereth by erroneous proces, the partie shall not haue a writ of Error, vntill hée haue sued by petition for it. P.17.E.3.fo.31. So likewise it is if lands are holden of mée by knightes service, a straunger bringes a Præcipe in capite of those landes against my tenant and recouereth by default, although by this recouerie I am not put out of possession of my seignorie, but the tenant holdeth of mée as he did before, and also of the king by collusion, yet in this case if the recouerer dye his heire within age, and the king seiseth the ward, I am driuen now to my petition for the ward, as appeareth in M. 17. E.3. fo.37. for this is another thing then euer I was seised of. Also it is a general rule, that where a straunger that hath title can-

not enter vpon a common person but is driuen to his action, there he can haue no remedie against the king but onely a petition: As take the case to be. If is found by office the kinges tenant nichole dyed seised, his heire within age, where in deede the said tenant had nothing but by disseisin done to mee, & I suffred him to die seised without any claim made: In this case I get no remedie by Monstrance de droit or trauerse, but am driuen to my petition. And so in al cases like where mine entry should be tolled if ỳ lands were in the handes of a common person, as appeareth in M.7. H.4.f.33. T.9.H.4.f.5. Also whereas the king doth enter vpon mee hauing no title by matter of record or otherwise, and put me out, and deteines the possession from mee that I cannot haue it againe by entrie without suit, I haue then no remedie but onely by petition. But if I be suffred to enter, mine entrie is lawfull, and no intrusion. Or if the king graunt ouer the landes to a straunger, then is my petition determined, & I may now enter or haue my Aisise by order of the common law against the said straunger, being the kinges Patentee, as appeareth in M.4.E.4.f.22. & M.24. E.3.f.65. H.10. E.3.f.2. And a great difference is betweene this case & the case where the king is intitled by double matter of record or such like, for in these cases notwithstanding the grant made ouer by his highnes of the landes to another, yet am I driuen still to my petition to the king & haue no other remedy. M.7.H.4.f.21. But it is not so in this case, and the reason of this diuersitie is, because that when his highnes seiseth by his absolute power contrary to the order of his lawes, although I haue no remedy against him for it, but by petitiō for the dignities sake of his person, yet when the cause is removed & a common person hath the possession, then is mine aisise reuyued, for now the Patentee entreth by his owne wrong and intrusion, and not by any title that the king giueth him, for the king had neuer title ne possession to giue in that case: and therefore not like

the

the other cases before, where the king hath the lands by the order of his lawes: that is to say, by double matter of record or such other like. And this appeareth in M.4.E.4.f.21. & 25. & M.24.E.3.f.64. & Trauerse 34.33.Li.ass. Like law is if I haue a rent charge out of certein land, & the tenant of the land enfeffeth the king by deede inrolled, now during the kings possession I must sue by petition, but if his highnesse enfeffe a straunger I may distraine for my rent vpon the straunger, & so it is in all the cases before, where a man may haue his trauerse or Monstrance de droit, if the lands be once out of the kings hands, the partie thē may haue his remedy that the common law giueth him: for in all these cases the petition did lye onely for the dignitie of his person & not for the right that he had to the possession of the thing. But if the king purchaseth lands holden of me, learne what remedy I may haue for my seignorie during the kings possession: For Wilby saith in Assise 124.M.20.E.3. that I haue no remedy in that case, & if his highnes make a feffement of these lands to hold of himself, yet can I not distrain for my seignorie like as I might do in the case of the rent charge before, because there cannot be ij. seignories of one selfe land, but am driuen to my petition in this case, for the king vpon this feffement by order of his lawes should haue renued the seignorie in mée, that is to say, to haue made the feffée to hold of mée of whom it was holden before, as appeareth in Petition 18. & 19. M.46.E.3. & M.17.E.3.f. 59. & so hath it bine vsed alwaies where his highnes hath lands by forfeiture of Treason held of a common person, if he make a feffemēt of those lands it must be Tenend' of thē ỳ they were holden of before, as I haue opened vpō the xij. chap. of the kings Prerogatiue: And so it is where the time is deuolued to his highnes for a Wortmain: but that is giuen by the statute de Religiosis. Also if ỳ king disseise my tenāt during this possession I haue no remedy for my seignorie but onely by petition, & if the king enfeffe my tenant to hold

of his highnesse, yet haue I no remedy for my leignorie, but onely by petition. But if one hold certeine lands of me which are falsely found by office to be holden of the king in Capite, and the king seiseth them and infeoffeth my tenant thereof, to hold of his highnesse, in this case I may now distreine for my seignorie and am not out of possession, and these cases appeare P. 32. E. 3. Assise 122. 124. P. 20. E. 3. Auowrie 113. & P. 46. E. 3. 11. and the reason of the diuersitie is this, because that in the last case my seignorie was neuer suspended, but euermore had his being and that notwithstanding the office, for it did not appertaine to me to trauerse the office & discharge the tenure, but the matter was left to my tenant to do, and seeing he did it not, he hath charged him selfe of a tenure by way of collusion to the king aswell as to me, but it is not so in the other case. Also it is to be noted, that if the king seise lands by title of wardship and make a feoffement thereof, in this case the heire nede not to sue his petition, but may haue a Scire facias to repeale the sayd letters patents, because the king was deceiued in his graunt, as appeareth M. 7. H. 4. f. 17. & P. 21. E. 3. f. 47. For there the king him selfe is in possession till til liuerie be made, so the heire there hath no cause to sue by petition, and the king is bound to deliuer it vnto him in whose right he seised. Also note, that suit by petition can be to no other then onely to the king, for no such suit shalbe made to the Quéne, or to the Lord Prince, for these personages haue no such Prerogatiue, as appeareth in P. 11. H. 4. f. 7. P. 10. H. 4. Scire fac. 135. P. 10. E. 3. f. 26. & Voucher 110. P. 14. E. 3. but though ỳ king be seised sometime in another bodies right, & not in his owne, yet the suit that is to be made must be by petition aswel as if he were seised in his owne right, as appeareth in 10. H. 4. f. 4. & as I said in ỳ beginning, a man shal haue his petition for goods aswel as for lands, as where theschetor seiseth goods of one ỳ is vtlawed, & hath accompted for thẽ in the exchequer, & after the vtla-

dilagary is reuersed: in this case the partie hath no remedy for his goods but only by petition. And this case you shal see in T.34.H.6.fo.51. Howbeit Catesby and Hussey hold opinion to the contrary hereof M.1.H.7.fo.7. And learne if a petition be sued for lands, and the plaintife be nonsuit, whether it be peremptory or not, because some say that ꝑ suit is as it were his writ of right: and hereof see the booke H.11.H.4.fol.52. and M.3.H.7.fo.14.

## ¶ Where a *Scire facias* must be sued before a liuerie or *Ouster le maine*. Cap.xxiij.

IF the king be seised of a ward and granteth it durante minore ætate, now when the heire commeth to full age, and sueth his generall liuery, he néedeth not to sue a Scire facias against the patentée, because his estate is determined by the full age of the heire, and yet it may bée that the heire had forfaited his mariage vnto the patentée, and then her hath good cause to retaine the land till he bée satisfyed of the forfaiture. But the law shall not intend any such forfaiture to be, and therefore there néedeth no Scire facias be sued. Like lawe is it, as séemeth if the king grant the wardship for no time certaine, but quamdiu in manibus nostris fore contigerit, if he make a speciall liuerie vnto the heire being within age, there needeth no Scire facias to be sued: so is it where the graunt is but durante beneplacito nostro, but if the king haue land in ward and infeffeth thereof a stranger, some thinke the heire néedeth not to sue any Scire facias against the feoffee but at his pleasure, and some other thinke he must, because his estate is not determined by the full age of the heire, as it is in the first case I put before. And it may be that an auncestor collaterall vnto the child hath released

with

with warrantie which is discended, which the heire might plede if he came in by Scire facias, or els by the liuerie the said warrantie is vtterly lost, and these cases appeare Pl. 7.H.4.fo.17.21.and 32.and 41.Pl.10.H.6.f.20.and Pl. 5.E.4.f.3.Pl.11.E.3.fo.47.H.3.H.7.fo.3. Howbeit me thinkes it were wisedome for the heire to sue a Scire facias to thintent that he thereby with the kings helpe might repeale the said letters patents and bring them as it were out of his way, which thing he may soner bring to passe by the kings suit then by his owne. Also the heire when he sues liuery nede not to sue any Scire facias against him that hath the lands to farme vpon the trauerse, as appeareth in T.1.H.7.fo.27.for he hath no terme certaine in the land, but donec discussum fuerit, which words are become void after the heire is of full age, because it cannot be then discussed without prejudice of the heire, and therefore void. Then further let us see where he that sueth by petition, or that tendeth his trauerse or Monstrance de droit shal sue a Scire facias, and where not. And as to that it is a generall rule, that if the king haue granted the wardship of the lands ouer for any terme certaine, or granted any other certaine estate in the lands, he that sueth his petition, Monstrance de droit, or trauerse, must sue a Scire facias against the kings patentee in such case, but he needeth not to sue any against the heire in whose right the king is seised of the land, because he that sueth doth not plede with the heire but onely with the king or such as hath his interest, as appeareth in 37.lib.ass.11. Like law it is if the kinges grant be but durante beneplacito nostro, or that it bee made hanging the trauers, petition, or Monstrance de droit, in this case he that sueth nede not to sue any Scire facias. And these cases appeareth Pl.5.E.4.fo.3. and Briefe 206. Pl. 13.E.3. And note that if the king grant the wardship to one which granteth it ouer to the husband & to his wife, then must there a Scire facias be sued both against the se-

cond lessee, and the patentée, but the wife néede not to be named in the Scire facias. For there lyeth no voucher in this Scire facias. Notwhitstanding in a writ of Ward she should haue bin named, because of the voucher, and this case is adiudged Briefe 618. H. 46. E. 3. and yet nevertheless Newton is of opinion in 48. H. 6. fol. 17. that no Scire facias shalbe awarded against the lessee in this case but onely against the Kings patentée. And learne if the King grant but the bodie alone, whether there néede any Scire facias to be sued or no. Also note this case, that is to say, whether the King seised for wardship before office and made a grant ouer, and after office was found whereby it appeareth that the childs father in whose right the King seised, was but tenant for terme of life, the reuersion to another, in this case he in the reuersion had an Ouster le maine without suing any Scire facias against the patentée, as it appeareth H. 10. E. 3. fol. 2. and at this day the case is more stronger, for such a grant were void, because it is before office. And therefore vpon any such void graunt there néede no Scire facias. And in 14. E. 4. fo. 7. it apeareth that one had trauersed an office which was sent into the Kings bench to trie, and had forgotten to sue his Scire facias, and yet he was suffered to go againe into the Chancerie to pray a Scire facias vpon the first trauerse, for it was said that the Chancery is a Court of conscience, and for that cause the thing that was there amisse may be reformed at all times. And learne if this Scire facias be sued against many, and one of them dieth, whether this shall abate the trauerse, Monstrance de droit, or petition whereupon it is sued, or els only the Scire facias. It seemes that nothing shal abate but the Scire facias because no mention is made of the tenant neither in a trauerse, Monstrance de droit, or a petition. And of this matter se the booke in 47. H. 4. fol. 33.

Ouster

OVſter le mayne is the iudgement that is geuen for him that tendeth a trauerſe or ſueth a Monſtrance de droit or petition, for when it appeareth vpon the matter diſcuſſed that the King hath no right nor title to the thing he ſeiſed, then iudgement ſhall be giuen in the Chauncerie that the Kings hands be amoued, and thereupon Amoueas manum ſhall be awarded to the eſchetor which counteruailes as much, as if the iudgment were giuen that he ſhould haue againe his land, as appeareth in Pl. 24. E. 3. 65. and this iudgement ſometime is giuen in the Kings Bench and not in the Chancery, and that is in caſe where the parties diſcend to an iſſue, then for the triall thereof they of the Chauncery muſt award a Venire facias returnable in the Kings Bench at a certaine day, at which day notwithſtanding that the Shirife returne not the writ, yet the alias venire facias ſhall not bee awarded out of the Chauncerie, but out of the Kinges Bench, for there and no where els it is recorded, quod vicecomes non miſit breue, as appeareth in Pl. 13. E. 4. folio 8. And when the iſſue is found for the partie, they of the Kings Bench ſhall giue iudgement and award an Ouſter le maine without ſuing for the ſame in the Chauncerie, as appeareth in Pl. 21. H. 7. fol. 5. and 29. Lib. Aſſ. 43. and yet the recorde of the iſſue that was tryed was not ſent thether, but only the tranſcript thereof: but what then? the iudgement is to bee giuen vpon the verdict which is there of Recorde, and when both Courtes bee courtes of the Common Law and the Kinges Courtes, they vſe not to remaund any thing to the place from whence it came, but to giue Iudgement there where it is is tryed. And Sharde ſayd, that when a Recorde comes once into the Kinges Bench, it ſhall neuer go from thence.

Alſo

Alſo note that ſometimes there goeth an Ouſter le maine as well to the Kinges patentée as to the Eſchetour, and that is where the king hath graunted the thing that hée ſeyſed to any other, but notwithſtanding that there go ſuch writs of Amoueas manum both to theſcheto⁊ and to the partie, yet the King is out of poſſeſſion as ſone as iudgement is giuen in the Chancery, not fo⁊cing whether any of theſe writs be awarded o⁊ not, eyther to theſchetour o⁊ to the partie: and thereupon the partie fo⁊ whom iudgement is giuen may enter fo⁊thwith into the lands, and ſhalbe ſayd no intrudo⁊, as appeareth in H. 10. Ed. 3. fol. 2. And the reaſon of it is becauſe the iudgement tyeth not the King to the deliuerie of the poſſeſſion, but only to leaue his hands off the poſſeſſion. And note that if a Diem clauſit come to the Eſcheto⁊, he by vertue of that writ befo⁊e hée make any inquirie may ſeiſe the land fo⁊ the Kings behoofe, which after hée hath once ſeyſed, if after by office no tytle be found fo⁊ the King, then the partie that ought to haue agayne the land, may ſue fo⁊ the ſame in the Chauncery where the office is returned and then Amoueas manum ſhall be awarded, fo⁊ vntill the making of a ſtatute at Lincolne Anno 29. E. 1. called the ſtatute de De eſcaetoribus the partie had no remedy in ſuch caſe but onely to ſue vnto the king himſelfe, as it appeareth by the ſayd ſtatute, and now that ſtatute giues an Ouſter le maine vna cum exitibus. Howbeit this Ouſter le maine may not bee ſued by parcels no mo⁊e then a liuery, and therefo⁊e if diuers writs o⁊ commiſſions bée awarded into diuers counties to inquire after the death of A. B. and in one countie it is found that hée holdeth nothing of the King but in ſocage, and in the ſame Countie and by the ſame inqueſt it is found that he holdeth of another by knights ſeruice, yet the lo⁊d by knights ſeruice getteth no Ouſter le maine vntil the other inqueſts be alſo returned in: Cauſa qua ſupra. Fo⁊ if he ſhould,

then

then he should haue it for the landes and not for the bodie, and so should haue it by parcels, for the body may not bee deliuered as long as there is any inquest to bee returned in. And the reason of it is, because that the inquest may find a tenure of the King by Knights seruice in chiefe in which case his highnesse ought to haue the whole landes, and if it be but a common tenure by Knights seruice, yet his highnesse at the least ought to haue the preferment of the bodie, yea and though the Lord of whom it is found to be holden be the Archbishop of Canterbury, or such a one against whom the kings Prerogatiue will not hold for the lands, yet because it holdes for the bodies, he getteth no Ouster le maine vntill all the offices bee returned in, for the reason before made, as appeareth in Liuerie 29. H. 16. E. 3. Howbeit by fauor and grace of the Court the Archbishop had his Ouster le maine before the other offices returned. And so note how in times past men haue sued Ouster le maine vpon a seisin made for the king although the office found afterward did not intitle his highnesse. Howbeit at this day it is not so vsed, for the escheator will not seise vnlesse there be an office found, although he might lawfully do it by the words of the writ Diem clausit, which vsage I do nothing mislike, considering the great trouble it anoydeth that might else insue to the kings subiects. And note that in all cases where the king is seised or in possession of the land by office or any other matter of record, his highnes seisin cannot be deliuered out of him vntill such time an Ouster le maine be sued, as if the king bee seised by office of the land of any Ideots, or for annum, diem & vastum of lands of any that is attainted: in these cases he that should haue these lands after the Kings title determined must sue an Ouster le maine: otherwise it is where the king is not seised of the land, but onely intitled to the profits: as of the landes of him that is outlawed in a personall action, or of Clerke conuict or such like, there

néede no Ouſter le maine to be ſued, as appeareth in Trauerſe 48.H.4.E.3.fo.47.and 9.H.6.f.20.and if the lands which is ſeiſed into the kings handes be holden iointly by many, yet euerie one of them by himſelfe may ſue his Ouſter le maine of his owne part without his companions, as appeareth in T.2.H.4.23.

# Liuerie. Cap.xxv.

THe maner of ſuing of a generall liuerie doth partly appeare in the title of Liuerie, in the great Abridgement of Iuſtice Fitzherbert Anno 12.H.4. Liuerie P.4.and Añ 21.R.2.Liuerie P.5. Where it is declared that after the heire that was in the Kinges ward is come to full age, then a writ de Etate probanda ſhalbe awarded vnto the Shiriſe of the ſhire where the ſaid heire was borne, to inquire of his age, in which caſe it is required by the law that euery one that ſhal paſſe in that inqueſt ſhalbe of the age of xiiij. yeres, meaning thereby that they and euery one of them ſhould be of full age at the birth of the child, becauſe that ſuch haue better knowledge and remembrãce then other of leſſer age haue, and that the heire that is in ward informe the inqueſt by certain ſignes and tokens of the time of his birth, as to ſay, that that yere there was a great tempeſt or a great plague, or ſuch like, which ſignes ſo giuen in euidence ſhalbe returned by the Shiriſe, as well as the principall matter. But whether it berequiſite to haue twelue or a leſſe number in the ſayd inqueſt or not, learne: for ſome thinke that any number from two vpward will ſerue, becauſe the tryall is by proues, and ſée the newe Natura breuium fol. 253.

E.

fol. 253. E. where it appeareth that this writ of Etate probanda was directed to the Eschetor of the Countye where he was borne and not to the shirife.

Howbeit note alwaies that they, where the land is, shal neuer inquire of this matter, vnlesse the birth and land were both in one shire, for they haue inquired of it alreadis, that is to say, when they dyd find the first office.

Thus when they haue found his age, that inquest shall bee returned into the Chancerie, and from thence shall bee awarded a writ to the Lord keeper of the priuie Seale, signifying vnto him that the heire is of full age, and vpon that a priuie Seale shalbe directed to the Chamberlayne of England to receiue his homage, which being receiued, the sayd Lord Chamberlaine shall certifie the Lord Chaunceller by writ of receipt thereof, and then shall the heire haue his liuerie. But it seemes that if the heire were neuer in ward but of full age at the death of his auncestour and so found by office, that then hee shall haue liuerie, as is declared vpon that office onely, without suing any writ of Etate probanda: for the writs of liuerie in this case make no mention of any Etate probanda, as they doe in the other case, but if the heire bee within age, and in the Kings ward, and after when hee comes to his full age other landes discend vnto him which the King also seiseth by an inquest that findes the heire of full age, yet this notwithstanding he must now sue an Etate probanda vpon both offices, as appeareth in 9. 13. H. 4. 6. and the reason of it is, because the finding of him of full age is but as voyd as long as there is a record which founde him within age, to the which Record the king might cleane vnto, as the best record that maketh for him vntill such time the contrarie thereof be proued by the writ of Etate probanda. Howbeit at this day the statute made Anno 33. H. 8. hath much abridged

the

the fées that haue bin gyuen vpon the suit of a general liuerie, namely for liueries to be sued of clere yerely value of v. pound or vnder, and that it may be sued without any office to be found. But I do not sée that the maner of the suit is in any other point altered or changed by the said statute, but it remaines as it did before. And that statute also gyueth men licence to sue a generall liuerie of landes not exceeding the clere yerely value of xx. li. Whereby I sée no let but that a man may sue his generall liuerie also for landes aboue the yerely value of xx. li. as he might haue done before the making therof, for this statute is not contrarie to any law that was before in that point, saning that a general liuery vnder the value of xx. li. cannot passe or be sued, if he haue not first his warrant from the Master of the kinges Wardes & Liueries, Surueyor, Atturney, and generall Receiuor, or three of them, signed & subscribed with their names & hãds: Thus may you sée the maner of the suing forth of a generall liuerie, which liuerie may not be sued by parcels as I haue sayd before, but intierly, that is to say, of all the landes the King is or ought to be seised of in his right that sues the liuerie. And therefore if the heire sue liuerie but of parcell of that that is found by office, or if the auncestor were seised of other landes then are found by office, if the heire sue his generall liuerie before an office thereof found, omitting them in the liuerie, the liuerie is misslued, as appeareth in Liuery 28. T. 12. R. 2. P. 44. E. 3. fo. 1. & 25. & H. 2. H. 7. fo. 12. and therefore it behoues the heire before he sue his liuerie, to cause an office to be found in euery shire where his auncestor had any landes. And this intier liuerie is intended as well of landes holden of other Lordes, being in the kinges handes, as of the landes that are holden of the king. And therefore if a man hold of the king in chiefe by knightes seruice, and of other Lordes in socage and dye, his heire being a daughter within the age of xiiij. yeres, in this case when the sayd daughter commeth to the age of xiiij. yeres, she getteth no liuerie of the landes holden in socage, but must

tary till shée be of the age of xxj. yeres, that shée may then sue liuerie of the whole, as it appeareth in Liuery 19.H.35 H.6. But note that in some cases one shall haue liuery of parcel, and that is where lands discend to diuers daughters, & one is within age, & the other of full age, now shée of full age shal sue liuerie with a partition of her part of al things that are seuerable: and this liuerie is well sued although it be not of the whole lãds discended, but if there be any things in the kings hands not seuerable, as aduowsons or such like, that must so remaine still vntil the other be of full age, as appeareth M.38.H.6.fo.9. And so note, that in a generall liuerie, if any thing be omitted, the liuerie is misused: And therfore some say, that after such a general liuerie had, there shalbe a writ awarded to inquire of the concealment, that is to say, whether the heire hath left out of his liuery or not, any of the landes that were his auncestors, which writ is called Breue de terris concelatis. And see the statut 28.E. 3.cap.4. that giues the rents to them that sue liuerie, when ỹ rent day cõmeth, although it cõmeth next day after their liuerie. And looke more for liuerie in the exposition vpon the 3.chapter of the Kinges Prærogatiue.

## Reseiser. Cap.xxvi.

Reseiser lyeth where a generall liuerie or Ouster le maine is misused by any person or persons vnduely and not according to the forme and order of the law, or vpon an office which is sufficient in the law for the partie to haue liuerie or Ouster le maine. In this case the king may reseise the landes without suing any proces against the partie, and shalbe aunswered of all the mesne issues and profits receiued and taken from the time of their first seisin, if it were sued out of his hands by an Ouster le maine, & if by a liuery, then but from the time of the liuery. And the partie that hath pursued it shal be accompted none other then as an intruder vpon the kinges possession after office, in which case no freehold shalbe adiudged in him. nor his

his wife of that poſſeſſion ſhall haue any dower, as appeareth in Liuerie 3. H. 18. E. 3. H. 21. E. 3. fo. 1. & H. 24. E. 3. fo. 63. But if one haue Liuery or Ouſter le maine by due proces, and after a Record is found in the treaſorie, or elſwhere, or an office in the countrey, whereby the king is intitled of a title growen vnto him before the ſuing of the ſaid Liuerie or Ouſter le main, although the partie ſhould haue had no Liuerie or Ouſter le main, in caſe the ſaid Recordes had then appeared, vnleſſe he could haue auoided the ſaid recordes: yet for aſmuch as they did not then appeare, he ſhal not be now after Liuerie or Ouſter le main caſt out of his poſſeſſion without a Scire fac' to be purſued againſt him, for ſo hath the ſtatute prouided that was made at Lincolne in the 29 yere of E. 1. called *Stat. de Eſchaetoribus*, the tenor whereof is this. Ad Parliamentū Regis apud Linc' tentū in octabis ſācti Hillarij anno regni ſui xxix. p conſilium Regis concordatū eſt coram dño Rege, ipſo rege cōſentiente, & illud extūc fieri & obſeruari pręcipiente, de conſilio venerabilis patris W. de Langton Couent' & Lichf. Epiſcopi tunc eiuſdē Reg. Theſaur', Ioh. de Langton Cancell', & aliorū de conſilio tūc ibidē pręſentiū, & corā rege, viz. Cum inquiſitiones per Eſchaetores ſuos captę per quecunq; breuia regis in Cancell' ipſius dñi regis fuerint retorn', & p eaſdē inquiſitiones compertum fuerit, qd' nihil tenet de ipſo dño rege, p q̄ cuſtod' trarū & tenīt hmodi ratione inquiſitionis in manū dñi Regis p ipſos eſchaet' captę, ad ipſū dñm Regē null' modo ptineant: qd' ſtatim et abſq; dilatione aliqua mādet' p bře dñi Regis de cancell' p̄cipiend' qd' Eſchaet' de tris et tenīs ſic in manū dñi Reg. p ipſos capt', de tēpore quo terrę & ten' ill' in manu dñi reg. extiterint, integré reddāt ipſi vel ipſis, cui vel q̄bus p inquiſic' pri' p eoſdē Eſchaet' captas compertū fuerit, qd' tre & tenīta illa debeant remanere: Saluo ſemp dño regi, qd' ſi poſtq̄ Eſchaet' ſui man' amouerint p breue ipſi' dñi Reg. vt p̄dict' eſt, aliqd' cōtigerit inueniri in Cancellaria, vel ad Scaccariū, vel alibi in cu-

ria ipſius dñi Regis, per q̃ cuſtodia terrarũ aut tenẽt eorundem, de quibus eſchætores man' ſuas amouerint in forma p̃dict̃ dño regi p̃tineãt, qd' ſtatim p̃muniãt ille in cuius ſeiſina tenta pręd' fuerint p̃ breue de Cancell', q̃ ſit ad certum diem corã dño Rege vbicunq; &c. oſtenſ. ſi quid p̃ ſe habeat vel dicere ſciat, quare dñs Rex cuſtodiam earũdẽ terrar' et tenẽtorũ habere non debeat, iuxta formã euidẽtiarũ ſeu memorandorũ p̃ ipſo Rege compertorũ. Et ſi venerit, et p̃ ſe oſtendat quare eadẽ cuſtod' ad dñm Reg. non p̃tineat, aut p̃tinere nõ debeat, immò qd' remanere ſibi debeat, recedat quiet', & cuſtodiã ſuã retineat. Si autẽ p̃monitus non venerit, vel venerit et nihil ſciat dicere, quare rex cuſtod' illã habẽ non debeat, ſtatim reſeiſient trę & tenta ill' in manũ dñi Reg. nomine cuſtodię, tenẽd' vſq; ad legitimã ętatẽ hęredũ eorundẽ, ſicut ſuperius dictũ eſt. Et ſi compertũ fuerit p̃ inquiſitiones p̃ Eſchaetor̃ ſuos factas et returnatas, qd' cuſtodia earũdẽ trarum & tenẽt in inquiſitionib' contẽtorũ, et in manũ dñi ſeiſitorũ dño regi remanere non debeat, qd' ſtatim mandetur Eſchaetorib' q̃ manus ſuas amoueant, & exitus integré reddãt &c. Eodẽ modo ſi poſtea compertum fuerit per euidẽtias & memoranda in Cancell' aut Scacc', vel alibi, vt p̃dictũ eſt, quód dñs rex cuſtod' eorum habere debet, reſpondeãt ipſi dño regi de exit' integré p̃ manus illorum qui terras aut tenta illa tenuerint a toto tẽpore, poſtquã terrę et tenemẽta illa primó in manum ipſius dñi regis p̃ Eſchaetor̃ ſuos capta fuerint p̃ bria ſupradicta: & iſte modus de cętero obſeruet̃ in cãcell', non obſtante quadã ordinatione nup̃ per dñm Regẽ facta de tris & tenũt in manũ ſuã p̃ miniſtr̃ ſuos captis et non liberandis, niſi p̃ ipſũ dñm Reg. & p̃ut cõtinetur in quadam diuidẽda per ipſũ Regẽ et Cancell' facta, Cuius vna pars penes Cãcellariũ remanet. *Stat. de Eſchaet. adiũ 29. E. 1.*

Alſo a yere before the making of this ſtatut, was there an other ſtatute made, intituled Articuli ſup̃ chart. which in the 19. cap. therof ſaith in this wiſe: De reſcheiue la ou leſchetor

chetor, ou le vicont ſeiſont en le main le Roy tres la ou il nad reaſon de ſeiſer, & puis quãt troue eſt la non reaſon, les iſſues de meſne temps ont eſtre ceo en arere retenus, & nad rẽdus quant le roy ad le maine ouſte, voit le roy q̃ deſormes, la ou terres ſont ilſsint ſeiſies, & puis le maine ouſte, pur ceo q̃ il ny ad reaſõ de ſeiſier ne tener, ſoiẽt les iſſues pleinmẽt rendus a celuy a q̃ la tre demurt, & auoit le darrein reſceue. By this ſtatut it plainly appeareth, how that before the making therof there was no Ouſter le main graunted vná cum exitibus, although it might neuer ſo plainly appere the king had no cauſe to ſeiſe. Howbeit that miſchiefe is now remedied by both theſe ſtatutes. Alſo by the one of theſe ſtatutes it appeareth, that the Ouſter le maine in ſuch caſe might not be graunted without ſuing to the king him ſelfe, which is alſo remedied by this ſtatute de Eſchaetoribus, which ſtatute although it make no mention of liueries, but onlie of Ouſter le maine, yet liueries are taken to be within the compaſſe and prouiſion of the ſame. And where the letter goeth onely to the caſes where the king ſeiſeth before office, and afterward the office that is found doth giue hys highneſſe no title, that there the partie may haue his Ouſter le maine making no mention of an Ouſter le maine to be graunted vpon any petition, trauerſe, or Monſtrance de droit, as in déede a trauerſe was not in vſe at that time. Yet men by an equitie extend this ſtatute De Eſchaetoribus both to the one and to the other, becauſe the ſtatute is beneficiall, as appeareth H.9. E.4.51. and in diuers other bookes. And *Tehierton* there ſaith, that if after liuerie or Ouſter le maine an office bée found, which intitleth the king of a title growen vnto him ſince the liuerie, or Ouſter le maine graunted, that in that caſe this ſtatute notwithſtanding, the king may reſeiſe without a Scire fac', for the wordes are onely where a Record or an office is found that maintaineth the title whereby the king firſt ſeiſed. Howbeit many hold opinion againſt him, and ſay that it was in the ſelfe ſame miſchiefe the ſta-

tute was made for, Tamen quære, for this statute De Escaetoribus should seeme to be meant onely to remedy that that was a mischiefe at cõmon law before the making of the said statute, as where there was no record found at the time of the liuery or Ouster le main sued to let or hinder the partie from suing of their said liuerie or Ouster le main, but afterwards was there found such a record, now this notwithstãding would the king reseise & put the party from his possession wythout aunswere to any proces sued against him, wherupon he might aunswere & so driue him to sue by petition, & make him render al the meine profits, which was a great mischiefe & hinderãce to the party: for remedy whereof this statute was made, but the like mischiefe or hinderãce is not where the king is intitled by a title growen since the liuerie or Ouster le main, for here the party shal not aunswere the profits but from the time of this title growen. And also the king doth him no wrong, for it standes with & affirmes the liuerie or Ouster le main, & the king thereby makes not the partie an intruder as he doth in the other case, & if the said *Yelwertons* opinion should not be law, they would make that the king could not seise vpon an alienation without licence made & found by office since the liuerie or Ouster le maine sued, which were no reason, & therfore I think the said *Yelwertons* opinion should prevaile in this case. And to the same intent & effect be those bookes ẏ I can find, for I can find no Scire fac' sued but in cases of a title growẽ before ẏ liueries or Ouster le main, & therfore in a Scire fac' sued vpon thys statute against the party that had liuerie or Ouster le main being tenant of the land at ẏ time of Scire fac' sued, he was deemed in the selfe same plight and course against the king, as he was at the time of the suing of his liuery or Ouster le main, for where he had made a feffement by licence, & taken an estate againe iointly to him & other, yet this Scire fac' did lie against him solely, & did not abate for the ioinctenãcy. So was it aiudged in a Scire fac' sued vpon this statute, ẏ the partie must maintain the title whereby he hath liuery or

Ouster

Ouſter le maine, and muſt maintain it ſo, that it is & was a good title & ſufficient to haue liuery vpō, notwithſtanding any record that is now found: as take the caſe to be this, one hath liuery as ſole daughter & heire, and after by office it is found that ſhe hath a ſiſter, which ought to haue had liuery with her, whereupon a Scire fac' is ſued againſt the partie that had liuery, to come & ſhew why the land ſhould not be reſeiſed, if ſhe come and will ſay that they be daughters by ſeuerall venters, & that this land was giuen to her father & mother in ſpeciall taile, & ſo ought ſhe to haue the liuery, as ſhe had, ỳ is to ſay, ſolely, this plée will not ſerue her becauſe it doth not maintaine the liuery: for how could ſhe haue had liuery ſolely, vnleſſe this matter had bin ſo found by office, For if this ſecond office had appeared before the liuery, ſhe could not haue trauerſed it, vnleſſe ſhe had made title, and then title can ſhe neuer make againſt the king, as heire, vnleſſe the ſaid title be firſt found by office. Wherefore no more then ſhe might trauerſe the ſaid office if had bin found before liuery, no more may ſhe trauerſe it now in this Scire fac' after liuery, as it appeareth 30. li. aſſ. 28. and ſo note that the record cannot be trauerſed in this Scire fac' in no caſe, vnleſſe it were trauerſable before liuery or Ouſter le maine. Alſo in the new Natura breuiũ fo. 260. & in H. 5. H. 5. 2. I find a Scire fac' ſued vpon this ſtatute againſt him that had liuery, becauſe an office hath found an other to bée nérer heire to the anceſtor that died then was he that ſued liuery. So alwaies as farre as I can find, it is ſued vpon a record that diſproues the liuery or Ouſter le maine, & not vpon any that affirmes it, whereby I ſuppoſe that Yeluer-tons opinion is law, as is before declared. And it ſeemes that by this ſtatute the king muſt ſue a Scire fac' although ỳ record or title ỳ is found for him be found within a yere after liuery or Ouſter le main ſued. And learne whether Aſſiſe lieth againſt the Eſchetor that ſeiſeth without a Scire fac', in caſes where a Scire fac' ſhould be ſued, for by the ſtatute of W. 1. ca. 24. aſſiſe lieth againſt him in caſes where

he ſeiſeth any lands by colour of his office without ſpeciall warrant or commandement, or certain authoritie that belongeth to his office ſo to do. And learne whether the King by that ſeiſure hath any poſſeſſion, for if the king ſeiſe without a Scire fac', where he ought to ſue a Scire fac', the party hath no remedy but to ſue vnto him by petition, euen as he ſhould do if his highnes had ſeiſed any other lands of his vñ out cauſe. Howbeit the king by ſuch a reſeiſer vndoeth not the parties poſſeſſion, ſo ꝑ he ſhalbe ſaid an intruder from the time of liuery or Ouſter le maine ſued, as it doth in caſe the reſeiſer had bin vpon a Scire fac', wherefore in ſuch caſe although the party cannot be ſuffered to recouer his poſſeſſion againe by entrie vpon the king, yet when the King graunts it ouer, he may now enter or haue aſſiſe, as appeareth 24.E.3.fo.64.& 43.li.aſſ.29. Alſo note that this ſtatute that giues the Scire fac' extends but vnto him or them that haue liuery or Ouſter le maine, or any other claiming by them. For if after liuery or Ouſter le maine ſued, a ſtrãger by an eigne title in diſaffirming the tenants intereſt enter as heire vpon him, or recouer by aſſiſe of Mortdanceſter, or any other action anceſterel againſt him, & is entred into the land as heire, now becauſe the lands are holden of ꝑ king in chief, his highnes may ſeiſe the ſaid land for primer ſeiſin or title of wardſhip, as the caſe doth require, wout any Scire fac' as appereth in H.21.E.3.f.1. For it is not to be ſaid now a reſeiſer, becauſe againſt him there was no ſeiſer made of the ſaid lands before. And learne & inquire if he that miſſueth the liuery be within age, whether the king ſhal reſeiſe in ꝑ caſe, as he ſhal do if it were miſſued by one of ful age: as take the caſe to be, lands are holden of the king in ſocage in capite, now the liuery is ſued within age, that is to ſay, at the age of 14. yeres, whether in this caſe the miſſuing of the ſame ſhall be a cauſe of reſeiſure or not: ſée the booke thereof Liuery 28.E.12.R.2. The wordes of the ſtatute be further, that if any Record be found in the Treaſory, or els where, that vpon this Record a Scire fac'

ſhalbe

ſhalbe awarded. But that is to be vnderſtand in this manner, that firſt the trãſcript of the ſaid Record ſhalbe by writ remoued into the Chancery, and then out of the Chancery ſhall there be a Scire facias awarded, and not out of the Treaſorie, as it appeareth 21. H. Aſſ. 15.

## Issues meſne. Cap. xxvii.

NOte that if the king haue a title, right or intereſt to any lands or tenements, his highnes when he ſeiſeth ſhalbe anſwered of al the meſne iſſues and profits from the time of his ſaid title, right or intereſt growen, and whether it be a right of Entrie, or title of entrie, it maketh no diuerſitie in the kings caſe: as for an example, The king entreth for a condition broken, his highnes ſhall be anſwered of all the iſſues and profits ſince the condition broken, and in that caſe a common perſon ſhall not haue the iſſues, and profits but from the time of his entrie 18. Aſſ. 18. Entre cong. H. 19. E. 3. Like lawe is it, if the kings tenant alien in Mortmaine, and the king entreth, but otherwiſe it is, if he enter for mortmaine in lands not holden of him vpon a title reuolued vnto his highnes in default of other Lords. M. 41. E. 3. f. 31. The ſame law is it where his highnes is intitled to ſeiſe for that the lands are of his foundation, and alienes contrarie to the ſtatute of Weſt. 2. ca. 41. which gæues the writ of Contra formam collationis: In this caſe his highnes ſhall be anſwered of all the meſne iſſues growen from the time of the alyenation, as appeareth in Forfaiture 18. H. 46. E. 3. And note alſo that if the king make any graunt which is not ſufficient in the law, or is deceiued in the making of the ſame, by reaſon it was made vpon a falſe ſuggeſtion, in this caſe if his highnes doth reſume this grant, and annul it Iure Regis, as he may, hee ſhall then bee anſwered of all the meſne iſſues and profits which were loſt by reaſon of the ſaid inſufficient grant as appeareth M. 11. H. 4.

H.4.f.5, but if his highnes be intitled to any lands nomine districtionis, there his highnes shal not be answered of the profits, but from the finding of the title, as in case where the kings tenant in chiefe alieneth without licence, and an office is thereof found, in this case his highnes shall not be answered of the profits from the time of that alienation, but only from the time of the finding of the office, or from the time of a Scire fac' returned, where the alienation is of record, and hereof see the booke H.8.E.4.f.4. Like law is it, where his highnes is to seise the lands of his widow that hath maried her selfe without his licence, 40.li.ass.36. And note that where the king is to be answered of the meine issues and profits perceiued & taken of any lands which haue come to sundry hands since the kings title first growen to the same, there euery one of them that haue sunderly perceiued and taken the profits, shall answere for his owne time, and not one for al, as it appeareth in the booke of 46. before remembred. And note also that by the statute of W. 2.ca.32. it is prouided that if any spirituall man bring any real action and recouer, that the land recouered shal remain in the kings hands, vntill such time as it be sued out of his hands by him that recouered, or els by the chiefe Lord, & in the meane time the shirife shal answere the king in the Exchequer of the profits, by which statute, whether the collusion be found, or not found, yet the king shall haue ỹ meane issues, as it is thought. T.20.H.6.f.38. So is it in a writ initial of deceit brought against any, the king shal haue the issues growen from the time of the first iudgement, vntill iudgment be giuen in the said writ of deceit, but hereof note this difference, that in a writ of deceit vpon a recouery in a Præcipe quod reddat of land where the proces was a Graund cape, if the plaintife recouer, he shall recouer the land and his damages, but not the issues of the land since the first iudgement, because the king shal haue them by the grand cape, & the shirife accomptable of them, Quod vide titulo Disceit in Fitz.33.& 46.P.12.R.2.P.2.E.3. H.8. E.3.

E.3.f.7.& T.50.E.3.f.18. Contrary law is it if there lie no grand cape in the action, as if the recouery be in a Scire fac', as it appeareth H.17.E.3.f.12.H.41.E.3.f.2.a.43 E.3.f.32.& H.8.H.6.f.5.

Sometime the king recouereth of the iſſue in the aduowſons of an eſtrãgers title, as if the husband being the kings tenant vpon a falſe ſuggeſtion purchaſeth licence to alien, and to make eſtate to him and to his wife, and ſo doth, and afterward dieth, the wife holdeth her in by title of Suruiuor, and occupieth, now vpon a Scire fac' againſt the wife, his highnes ſhalbe anſwered of all the meane iſſues ſince her occupying of the two partes of the land, and the third part he occupieth and alloweth for her dower. 40.lib.aſſ.H.36.

FINIS.